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A P P E A R A N C E S:

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P R O C E E D I N G S

THE CLERK: All rise.

(Court enters.)

THE COURT: Everyone may be seated. The last juror just arrived. I have handed out a complete version -- almost complete version of the jury instructions. There was a suggestion for an edit made by the defense, which I'm told the government agreed to, which I will incorporate, but it's not in that draft that you just got. It involves the word "entirely." So I will do that orally.

I think at this point, unless there's anything else -- you're about an hour and a half; is that right?

MR. KOSTO: A little less.

THE COURT: Okay. Well, at about an hour and a half I'll give you the -- sort of the "eh," you know, because we have to just get this going. People can't listen after a certain point. We'll take a break after the openings so that they're fresh when they come in and hear you. How long do you think you'll be?

MR. NEMTSEV: 45 minutes to an hour.

THE COURT: Okay. And we'll take either a break or lunch and we'll go into my charge, which I think is actually quite long.

MR. FRANK: Judge, you forgot my rebuttal again.

THE COURT: I keep forgetting your rebuttal. Yes,

1 your rebuttal, and then we'll go into the charge.

2 Okay. There we go. I think we'll bring the jury in.

3 MR. FRANK: So we'll go straight into the rebuttal
4 after the defense?

5 THE COURT: If it's only 45 minutes, yeah. I do
6 usually make a practice of handing out the verdict form for the
7 jurors so they know what counts that you're addressing. So
8 I'll give this now to MaryEllen. Do we have a form of the
9 indictment? We don't have to deal with that right now. I'm
09:11 10 not going to give that to anyone right now, but do we have it
11 here in the courtroom, the indictment everyone agreed on?

12 MR. FRANK: We do not, but we'll get it during the
13 break. It's just the --

14 THE CLERK: Just one minute --

15 THE COURT: Oh. Never mind. Then we won't hand it
16 out. It's not essential.

17 THE CLERK: They can run up and get a copy.

18 THE COURT: I know, but we're not waiting for it.

19 MR. FRANK: We had agreed to just put in the counts.
09:11 20 Did we agree to leave it out entirely?

21 (Discussion held off the record.)

22 MR. FRANK: So we'll just put in the counts, Your
23 Honor.

24 THE COURT: Excuse me?

25 MR. FRANK: The parties have agreed to just send back

1 the counts.

2 THE COURT: Yes, on the indictment. Yes, yes.

3 THE CLERK: All rise for the jury.

4 (Jury enters.)

5 THE COURT: Good morning to everyone. Anyone speak
6 about the case, see anything in the press, social media, anyone
7 try and get in touch with you? Okay. Good. We're going to
8 hand out right now a blank, obviously, verdict form. These are
9 all so that you understand the counts that will be addressed in
09:13 10 the closing arguments. Obviously, at the end of the case,
11 we'll only want one official form, but you can take notes on
12 this if you choose to. The verdict form needs to be unanimous.

13 We'll first hear the government's closing. Remember,
14 it's not evidence. It's just the government's opportunity to
15 sum up the evidence. Then we'll take a brief break, not a
16 full-blown break. And then we'll go to defense closing
17 argument. Then there'll be a brief opportunity for rebuttal
18 and then we'll take a break, and then it will be the closing
19 instructions that I'll give you about the law that applies in
09:13 20 this case. It's going to be a long day. We'll feed you well.
21 But we're going to get going right now. I'm not sure what's
22 that -- what's over there.

23 MR. FERNICH: Just one of the chawks, Your Honor.

24 THE COURT: That we've already seen?

25 MR. FERNICH: Yes.

1 THE COURT: Fine. Good. Okay. Have you shown to
2 them what it is? Because it's not visible from here.

3 MR. FRANK: It's the same chalks we've been using with
4 the photographs.

5 THE COURT: Okay. Good. Let's be seated. Let's get
6 going. If you're taking notes, please mark down this is --

7 MR. FERNICH: May it please the Court?

8 THE COURT: Yes.

9 MR. FERNICH: Counsel.

09:14 10 CLOSING ARGUMENT BY MR. KOSTO:

11 MR. KOSTO: Good morning. The defendant, Vladislav
12 Klyushin, the owner of a company that advertised its ability to
13 hack into computer networks at will, opened a brokerage account
14 for the first time in July 2018. Even though he was a beginner
15 at trading, he quickly made nearly 21 million dollars betting
16 on earnings announcements, an almost 900 percent return. The
17 stock market's return for that same period was only 25 percent.

18 The defendant also traded on behalf of three
19 investors -- Alexander "Sasha" Borodaev, Boris Varshavsky, and
09:15 20 Sergey Uryadov -- making another 23 million for them in even
21 less time, and taking a cut of as much as 60 percent of that
22 money for himself.

23 One of the defendant's employees involved in this
24 trading, Nikolai Rumiantcev, made millions more, even though he
25 had never had a brokerage account before either. Two other

1 associates, Igor Sladkov, the guy with the M-13 chat app in his
2 iCloud account, and Mikhail Irzak, took home 50 million. They
3 were connected to the defendant through his friend and employee
4 Ivan Ermakov. For this whole group, a cool 90 million dollars.

5 But here's the thing: The defendant was a one-trick
6 pony. He and his crew were good at only one thing. Somehow
7 they only managed to make money on quarterly earnings
8 announcements, and not just any quarterly earnings
9 announcements, they traded the earnings of companies that filed
09:17 10 their earnings reports using one of two filing agents,
11 Donnelley Financial and Toppan Merrill, two companies that, it
12 just so happens, were hacked at the exact time that the
13 defendant and his crew started making money hand over fist.

14 But as it turns out, the defendant wasn't even a
15 one-trick pony, because in January 2020 when TM reset its
16 passwords and kicked the hackers out, the defendant basically
17 stopped trading earnings in companies that filed their reports
18 through TM, and he stopped making money on it. And in August
19 2020, when DFIN got the hackers out of its network, the
09:17 20 defendant and his crew all but abandoned ship on trading
21 earnings. When they didn't have tomorrow's news today, they
22 went from trading earnings 78 percent of the time to less than
23 7 -- or barely 7 percent of the time. And their win rate
24 dropped from 68 percent to 42 percent. Now they were getting
25 earnings calls wrong more often than they were getting them

1 right. And they started losing money on earnings trades.

2 Now that you've seen and heard the evidence, you know
3 why. The defendant and his associates were trading on stolen
4 information, information they obtained by hacking into DFIN and
5 TM's computer networks using the same techniques that the
6 defendant advertised to his cyber security clients. At the
7 beginning of this case, we told you that the evidence would
8 prove beyond a reasonable doubt that the defendant did exactly
9 what he's charged with doing, scheming with Ivan Ermakov,
09:19 10 Nikolai Rumiantcev, and others to hack into Internet-connected
11 computers, to steal information from those computers, and to
12 use that information to make money by trading stocks for
13 themselves and M-13's clients.

14 You know now that the evidence has shown exactly that.
15 For his actions, the defendant is charged with four crimes:
16 Wire fraud, securities fraud, unauthorized access to computers,
17 and conspiracy to commit those crimes. Over the next hour or
18 so, I'm going to walk you through the evidence of these crimes
19 in four basic parts. First, that TM and DFIN were hacked.
09:20 20 Second, that the defendant, his co-conspirators, and his
21 company, M-13, were behind those hacks. Third, that the
22 confidential information that they stole from TM and DFIN
23 related to their purchase and sale of securities. And fourth,
24 that from the moment Vladislav Klyushin joined this conspiracy,
25 he was all in. He knew what he was doing was wrong.

1 So let's start with the hack. There's no serious
2 dispute in this case that the filing agents, DFIN and TM, were
3 hacked. The hackers used the Internet to download the
4 confidential business information belonging to TM and DFIN's
5 publicly traded clients. Every employee who testified told you
6 that both the companies kept the information confidentially
7 online and under digital lock and key with usernames and
8 passwords. Of course they did. This was information that the
9 public didn't have yet. This was tomorrow's headlines. Julie
09:21 10 Soma called it confidential and sacred. Hyeyoung Han told you
11 employees couldn't trade on this because it was inside
12 information, information that could affect the price of the
13 client company's stock when it was released, information that
14 these clients hadn't yet filed with the SEC's EDGAR system.

15 This was also a sophisticated and coordinated hack.
16 But even so, the hackers left a trail for you to follow. These
17 attacks both hit at the same time, February 2018 or a little
18 bit earlier for DFIN. And later the same year for TM. You
19 remember the testimony about DirBuster hitting those computers
09:22 20 every second in November of 2018.

21 There were similar IP addresses that hit both
22 companies, like ones from AirVPN, assigned IP addresses
23 starting with 199.249.230 on your screen from Julie Soma's DFIN
24 account and Arthur Smallman's account at Toppan Merrill. These
25 weren't the VPNs that companies offered their employees to get

1 online. These were commercial VPNs that helped the hackers
2 hide their location.

3 There were other IPs common to both victims too,
4 including one you'll recognize, 89.238.166.235. The hackers
5 harvested the same kinds of information from both companies,
6 earnings reports filed with the SEC in those forms, 10-K, 10-Q,
7 8-K, and the exhibits, like Exhibit 99.1, all taken shortly
8 before they were to be filed.

9 Just from the Boston IP address alone, 104.238.37,
09:23 10 there were 113 different downloads in over three weeks, and you
11 saw when Ms. Yanochko testified, all in, basically,
12 alphabetical order, between 1:00 a.m. and 7:00 a.m. on the left
13 of Exhibit 195 there. That just so happened to be in the
14 middle of the business day in Moscow. Ms. Han from Korea, she
15 didn't even deal in Exhibit 99s, and her downloads also came
16 when she was sleeping, but in the middle of the Moscow
17 afternoon. Pacific time on the left, Moscow time on the right.
18 And you know that the downloads over Jason Lewis's accounts
19 weren't his. You know that DFIN salesmen didn't even access
09:24 20 live data. The hackers burned through his credentials after
21 DFIN reset Ms. Soma's credentials and then reset Ms. Han's
22 credentials in April of 2020. There he is in purple on that
23 bar graph in May 2020.

24 The FBI caught a real break with these logs. The logs
25 didn't capture every single download that took place, but the

1 DFIN logs showed what the hackers were up to. TM, for its
2 part, only had about 90 days of logs, but the ones they did
3 have told the exact same story. Ben Oliver took one look at
4 his user log from Toppan Merrill. Remember, he shook his head
5 no. He barely used the Bridge system for his job, and he
6 certainly didn't use it like that, opening file after file, one
7 at a time, in the middle of the night, Pacific time, over a
8 computer that had the wrong name, USLEDGE. And there was the
9 same kind of malware found at both companies, tools to steal
09:25 10 usernames and passwords like Mimikatz, tools to make secure
11 connections between computers, like PowerShell, malware renamed
12 to hide itself on those victim companies' networks.

13 DFIN's incident response professional told you that
14 one of the pieces of malware on DFIN's network was so
15 sophisticated that it was programmed to delete its own logs so
16 they couldn't be found. And the victims' computers at both
17 companies phoned home in the exact same way, both companies'
18 computers reached out to Internet domains with bizarre-sounding
19 names like cloudapifinance.info for TM or investmentcomp.com or
09:26 20 finauiditsolutions from DFIN. These were the digital clues that
21 led to the defendant's doorstep.

22 You saw the patient and painstaking work that the FBI
23 did -- and I'll admit it was painful for all of us at times --
24 tracing these attacks back to M-13's computer network, to the
25 defendant, and to his co-conspirators. Painstaking because

1 these were sophisticated hackers, hackers that used the same
2 advanced hacking techniques that the defendant advertised on
3 his company's website and in his pitches to clients.
4 Exploitation of the most dangerous vulnerabilities in order to
5 breach the network perimeter, obtaining credentials to access
6 servers, identification of sensitive data stored in open form.
7 And remember how sophisticated those attacks were. They
8 involved dozens of IP addresses, those private VPNs, domain
9 accounts rented by the dozen, each from a separate email
09:27 10 address. Bitcoin to pay for them. Hacker computers protected
11 by gatekeeping software. Malware renamed so that IT folks at
12 the companies wouldn't spot it. PowerShell software that
13 encrypted the communications between the victim computers and
14 the hacker computers so that no one could see what was leaving
15 the building.

16 This is exactly what the defendant offered his
17 customers. Our experts imitate a full-scale targeted attack
18 during which the attacker, while trying to conceal his
19 presence, uses a wide range of actions against the
09:28 20 organization's infrastructure. This is literally what the
21 defendant did for a living. But despite that sophistication,
22 you know that there's no such thing as a perfect crime. And
23 you saw three different ways that the FBI was able to trace
24 these hacks back to the defendant by following the clues in the
25 digital evidence.

1 First, you know that all ten of those strange-sounding
2 Internet addresses coded into the malware at Toppan Merrill and
3 DFIN came from the Namecheap, the domain company. You saw the
4 pattern in the signup emails, first name, last name, sometimes
5 digits @inbox.lv. Nine of those ten domain accounts were
6 accessed by a single IP address in yellow there,
7 89.238.166.235. And you know that that was one of the same IP
8 addresses that hit both DFIN and TM directly.

9 AirVPN and other IP addresses from the hack in blue
09:30 10 and green here had accessed Namecheap too. You learned that
11 those Namecheap domains were assigned to Digital Ocean and
12 Vultr, Internet companies that rented out those virtual servers
13 through their resellers, BitLaunch for Digital Ocean and
14 99Stack for Vultr. And you know that IP addresses used at
15 BitLaunch were also some of the same IP addresses that hit
16 Toppan Merrill. Exhibit 178 on your left is from BitLaunch's
17 records, and Exhibit 77A on the right was the information from
18 Toppan Merrill, blue to blue, yellow to yellow.

19 And you saw the same kinds of common IP addresses that
09:30 20 hit both 99Stack, the Vultr reseller, and Toppan Merrill.
21 99Stack on the left, Toppan Merrill on the right, same IP
22 addresses. Here's what else you know: Both the BitLaunch and
23 the 99Stack virtual server accounts had the same subscriber,
24 someone using the name Andrea Neumann and the email address
25 neumann@dr.com. And the Neumann account at Vultr was accessed

1 by that familiar IP address again, 89.238.166.235.

2 You also know how those rented computers were used
3 because the FBI forensic examiner told you. These were the
4 hacking computers that hit TM. He found Mimikatz, the same
5 password-stealing software that TM's consultant told you was
6 found at TM. He found renamed PowerShell. Remember rdtevc?
7 That's the same software name that TM found on its computers.
8 On the hacker computers, he found the names of TM computers,
9 like USD for U.S.desktop 10846, and TM employees that Ben
09:32 10 Oliver told you about, Rayna Behm and Jerome Taylor.

11 And he found evidence of that gatekeeper program,
12 NGINX, which hid the hacker's command computer behind a
13 protective shield of seven gateway computers so that anybody
14 from TM who was looking into all this traffic leaving their
15 network would be directed somewhere else. When they went
16 looking for cloudapifinance, they would end up at a completely
17 different website. They wouldn't be allowed through.

18 And you know that from those hacker computers, the
19 trail led right back to the defendant's company. Namecheap
09:33 20 records showed that neumann@dr.com, the email that was used to
21 rent the hacker servers, was also associated with another
22 Namecheap account. This one too had been accessed by that
23 familiar IP address, 89.238.166.235, that had attacked TM and
24 DFIN and that was associated with so many of those other
25 Namecheap accounts that you've seen already in this case. And

1 the Neumann account was paid with Bitcoin.

2 You know from the FBI's cryptocurrency expert, whose
3 testimony was virtually unchallenged, that the Bitcoin used to
4 pay for the Neumann Namecheap account led right back to the
5 defendant's company. First, the change from the Neumann
6 transaction -- that's Namecheap domain 1 -- went to Namecheap
7 domain 2 under the name kavin.sspender@mail.com. And the
8 change from kavin.sspender was used within just about two hours
9 to pay for a third Namecheap account. That one was paid for
09:34 10 and registered with an inbox.lv email address,
11 wan-connie909@inbox.lv, just like all the Namecheap accounts
12 that were used in the attack on DFIN and TM. You know from all
13 this evidence that Namecheap accounts, Neumann, sspender, and
14 Wan Connie were paid for and controlled by the same people.

15 And here's what else you know, that the Wan Connie
16 account leads right back to M-13, right back to the defendant's
17 company. You can see it right there in the BitPay records.
18 This is Government Exhibit 181, Column S, 89.107.124.42.
19 That's the M-13 IP address, the defendant's company, the one
09:35 20 that tells its customers it can imitate the very same hacking
21 techniques that were used on TM and DFIN, the same M-13 IP
22 address that the defendant, Nikolai Rumiantcev, and Ivan
23 Ermakov all used regularly. It's right there in the Namecheap
24 records too. 89.107.124.42.

25 But you know that's not the only connection between

1 M-13 and the hacks. There were all those AirVPN IPs that were
2 used to hit both victims. You know the FBI got a pen register,
3 that caller ID for computer connections, on one of those AirVPN
4 IPs. That was the one that hit Benjamin Oliver's account at
5 Toppan Merrill, 185 -- you can see it there -- .228.19.147.
6 Exhibit 130 tells you this is an AirVPN IP address. Somewhat
7 unsurprisingly, there were dozens of hits on that caller ID
8 from the 89 IP, 89.238.166.235, that familiar IP address that's
9 all over these attacks, at Namecheap, at Digital Ocean, at
09:36 10 Vultr, at DFIN, at Toppan Merrill.

11 And here's who else showed up using that exact same
12 AirVPN IP, including on that same day, January 29th, 2020, the
13 very first day that the FBI had its pen register up and
14 running, the defendant's company, M-13. You know that there
15 are a lot of VPN companies out there, and literally billions of
16 IP addresses. The defendant's own witness, Mr. Roberts, told
17 you so. It just so happens that the defendant's company chose
18 this VPN provider, and not just this VPN provider, but this VPN
19 provider's IP address that was used to attack TM. And here's
09:37 20 what else you know. The defendant was at the office that day,
21 because within an hour of the AirVPN computer hitting M-13's IP
22 addresses, the defendant was logging into his Russian Standard
23 Bank account from the very same IP address.

24 Ivan Ermakov was no stranger to AirVPN either.
25 Despite all of the VPNs out there and the 3.7 billion IP

1 addresses, he'd been using that same AirVPN IP to update his
2 iTunes account for years. Members of the jury, that's no
3 coincidence. That is a mistake that led you right to him.

4 The M-13 IP addresses here at Government's Exhibit 186
5 and 187 were totally wrapped up in this hack-to-trade scheme.
6 They came back to Namecheap. They came back to AirVPN. And
7 the defendant, Rumiantcev, and Ermakov used that same IP in
8 their own names all but daily. In fact, it was the M-13 IP
9 address that Ermakov used to download the SaxoTraderGO app, the
09:38 10 one he used to trade in the defendant's Saxo accounts. They
11 used the M-13 account to access WhatsApp, Facebook, Apple.
12 They also used it to access Rumiantcev's trading accounts, the
13 defendant's trading accounts, and the trading accounts of those
14 three investors, Alexander Borodaev, Boris Varshavsky, and
15 Sergey Uryadov, which tells you who was managing the investors'
16 accounts, by the way, the same accounts that engaged in all of
17 the suspicious trading.

18 It's no accident that the defendant and his associates
19 used AirVPN because you know that they were obsessed with
09:39 20 anonymity, just as you would expect hackers to be. That's why
21 they used encrypted apps like WhatsApp. And even more secure,
22 Threema chat, and eventually a completely impregnable chat that
23 M-13 built for itself, that even the defendant's own expert,
24 Mr. Roberts, couldn't read. It was their own hidemyass.com.

25 The third forensic connection to M-13 was another Ivan

1 Ermakov mistake. You know that Ermakov connected to Apple to
2 update his iTunes account, in his own name, over the IP address
3 194.204.194.11 three times at about 7:44 in the morning, Zulu,
4 on May 9th, 2018. The IP address number itself isn't so
5 important, but you know that four minutes later, that same IP
6 was used to attack DFIN over Julie Soma's account in the middle
7 of the night on the West Coast of the United States. Ivan
8 Ermakov might as well have signed his name in DFIN's logs. And
9 here's what else you know. The defendant actually did sign his
09:41 10 name to this crime, because you know what you can't do
11 anonymously? You can't buy and sell stocks. And this is how
12 you know to a certainty that the defendant was involved in this
13 scheme.

14 In fact, you could convict the defendant based on his
15 trading activity alone. For starters, you have to remember who
16 the defendant and these other traders were. He didn't even
17 have a brokerage account before July 2018. Neither did
18 Mr. Rumiantcev, neither did M-13, neither did Mr. Irzak or any
19 of the investors. The defendant told Saxo Bank that M-13 had
09:42 20 ten years of analytics experience. But here's what he didn't
21 say: He didn't tell the bank he'd only been trading since July
22 2018. These men, this group, they were stock-trading nobodies.

23 Take a look at M-13's website when you get back to the
24 jury room, Exhibits 60 through 64A, they're there in
25 translation for you. You'll find a lot of information about

1 hacking. You will not see one word about trading. And then
2 all of a sudden, just as DFIN and TM get hacked, the defendant
3 became the G.O.A.T. of earnings trading, the greatest of all
4 time. And here's what else you know. The defendant may not
5 have joined the scheme until mid-2018, a few months after it
6 started with Sladkov and Irzak, but once he was in, he was very
7 much in charge, telling Ermakov and Rumiantcev exactly what to
8 do. He didn't do the day-to-day trading, but you'll see that
9 he was very much in the weeds. One way you know that is from
09:43 10 the way he took charge in that Saxo Bank meeting in April of
11 2020. You remember the call where the bank wanted answers to
12 questions about the defendant's suspicious trading. Jeffrey
13 Zorek told you about it. There's a name from a while ago.

14 Listen to the second half of that call. There's a
15 moment where Rumiantcev can't handle the most simple question.
16 "I have simply almost no recollection of this. I don't
17 remember that situation." And it's the defendant who jumps in
18 to answer Mr. Zorek's questions about trading, the strategy
19 behind it, and the specifics of the trades they made. The
09:44 20 defendant recited those details off the tip of his tongue --
21 the date of the Tesla trade, the price, the amount of the
22 trade, when it was in relation to the earnings report, how the
23 stock reacted. Over and over in that meeting, the defendant
24 demonstrated an almost encyclopedic knowledge of his own
25 trading in Ulta, in Roku, in Tesla. Look at the transcript.

1 And you know from the supersecret Threema chat that he was a
2 demanding boss.

3 When Ermakov traded both long and short in the same
4 stock, the defendant immediately asked to clarify the
5 situation. Later, a year before that Saxo call, the defendant
6 was demanding to know what went wrong with a single trade.
7 Vlad has to tell him what happened to the Grub. Ermakov had
8 screwed it up. And when Ermakov and Rumiantcev weren't
9 trading, the boss needed to know. "Vlad needs information from
09:45 10 which date and to which date we do not trade."

11 When Ermakov and Rumiantcev talked about hiring a
12 trusted analyst -- and these are the reports that the defendant
13 was asking after -- when Ermakov and Rumiantcev talked about
14 hiring a trusted analyst they could use to help them without
15 revealing their secrets, Rumiantcev said he would need to
16 estimate the cost and write to the defendant before they could
17 make the hire. And you saw what happened when Ermakov wanted
18 to add someone else to the secret chat, a colleague, Ermakov
19 said, who was completely on top of the subject. "You can trust
09:46 20 him as you trust me." But that wasn't good enough for
21 Rumiantcev. He wanted to make sure that the defendant had
22 given the okay. And in May 2019, the defendant joined the
23 Threema chat so that Ermakov and Rumiantcev wouldn't have to
24 keep going to him with all their questions and updating him.
25 They could all just discuss the trading together in one place.

1 He'll be reading it on his own. And look at how he traded.

2 Max Clarke from the SEC told you there were about
3 38,000 earnings filings the defendant could have traded on
4 between July 2018 and September 2020. DFIN and TM handled
5 about 16,800 these, or 44 percent. Given that market share, if
6 the defendant's trading were unrelated to who the filing agent
7 was, you would expect him -- you would expect to see him
8 trading in DFIN and TM only about 44 percent of the time.
9 Instead, the defendant traded in the earnings of DFIN and TM
09:47 10 clients 96 percent of the time, 343 out of the 356 trades he
11 made during that period. Mr. Clarke told you that that was
12 like flipping a coin 356 times and getting heads on 343 of the
13 flips. No trading strategy would yield choices like that,
14 other than a trading strategy based on who the filing agent
15 was.

16 And you know that makes no sense. These companies
17 aren't doing anything that affects the company's stock price.
18 They're service companies. They format earnings filings, and
19 they ship them off to the SEC, just like FedEx and DHL deliver
09:48 20 packages. You don't pick stocks based on who the filing agent
21 is either. There's really no dispute about that in this case,
22 but Mr. Clarke's statistical analysis said that if there was no
23 relationship between the filing agent and the defendant's
24 trading choices, you would see trading like this less than one
25 time in a trillion. In a trillion.

1 But here's how you know to a certainty that the
2 defendant's trading was based on the hacks at DFIN and TM,
3 because when he and his fellow hackers were locked out of those
4 companies, they stopped making money, and they stopped trading
5 earnings releases, going from trading earnings about three
6 quarters of the time to just about 7 percent of the time. You
7 didn't leave your common sense at the door to this courthouse
8 when you came in to serve as jurors, and your common sense
9 tells you what that means. The hacks were the defendant's
09:49 10 secret sauce. The stolen information was the key to his
11 trading success, not that ridiculous app he described on the
12 call with Saxo.

13 You remember that. They called it Preston. He
14 claimed it could review social and mass media and spit out
15 stock recommendations, the same cover story that Rumiantcev and
16 Ermakov discussed when they were thinking about that analyst
17 that they wanted to hire. And remember how Rumiantcev reacted
18 when his boss offered to let Saxo try this app out? He
19 panicked. He got tongue-tied. He told Saxo it wasn't ready.
09:50 20 Well, one would have to understand that the Preston app's
21 primarily based on news. There is no financial information
22 there. This is all about company image built on mass and
23 social media. That's all.

24 The defendant jumped in and insisted, and when Saxo
25 did get its hands on Preston a few months later, the bank

1 didn't see any stock recommendations. And when it asked to see
2 how the app recommended those stocks, Rumiantcev claimed that
3 part was a trade secret. How could an app that was barely
4 ready in July of 2020 be helping make stock picks all the way
5 back to July of 2018?

6 Mr. Clarke also showed you that the defendant and his
7 traders had the most uncanny ability to predict market
8 surprises, those times when analysts expected a strong earnings
9 number, but the company underperformed, what Mr. Clarke called
09:51 10 a miss. Or where analysts expected weak earnings, and the
11 company's numbers turned out to be really strong, that was the
12 beat. Whether earnings would be a miss or a beat was
13 confidential. That's what was sitting on the servers at DFIN
14 and TM. That's what made them surprises to the stock market.
15 The biggest surprises were the outcomes that should have been
16 the least predictable. But big surprises were what the
17 defendant and his trading partners seemed to do best. 86
18 percent of the time -- and that's on the right in Exhibit
19 210 -- when there was a big and good-news surprise sitting on
09:52 20 DFIN or TM's servers, the defendant bet the stock would go up.
21 And when the surprise was disappointing, he consistently, 85
22 percent of the time, went short, betting the stock would go
23 down. But you know these weren't bets at all, because the
24 defendant already knew the answers.

25 Mr. Clarke told you that if there was truly no

1 relationship between surprise information being stored at DFIN
2 and TM, and the defendant's pattern of trading in the direction
3 of that surprise, you'd see this trading less than one time in
4 a trillion.

5 Take a look at Skechers in the second quarter of 2019.
6 That surprise was positive. The company was going to beat
7 earnings by about 15 cents per share, 34 and 49, you have it
8 there. All the traders, starting with Sladkov, started buying
9 Skechers, betting the price would go up. And when the release
09:53 10 came out, that big black bar, the whole group, including the
11 defendant, made more than a million dollars on that single
12 trade.

13 Kohl's, in the third quarter of 2019, was a big miss.
14 The company missed its number by about 12 cents a share. But
15 bad news for Kohl's was good news for the defendant and his
16 co-conspirators. Following a download from DFIN's servers, he
17 had jumped into the market in a short position, betting the
18 price would go down. Here, again, the defendant in that third
19 row made more than \$600,000 predicting the most unpredictable
09:54 20 of surprises. It happened again with Ulta Beauty. Ulta was a
21 TM client, so there are fewer logs here to show you. The
22 earnings were a miss, and what's worse, the company's Exhibit
23 99.1 updated its financial guidance downward, how much money
24 the company was expecting to take in. Ulta's price plummeted
25 by 30 percent when that news came out. But a man who was brand

1 new to securities trading, who had no brokerage account until
2 July 2018, bet the price would go down, and he made almost
3 2 million dollars overnight on a single trade.

4 Now, you've also heard of examples on trades where the
5 defendant lost money, and we showed you several. You also know
6 why. Having earnings information ahead of everybody else is
7 absolutely a huge advantage, an unfair advantage, but it
8 doesn't guarantee success a hundred percent of the time.

9 Mr. Clarke told you that. Sometimes the market reacts in
09:55 10 unexpected ways. Sometimes companies announce other news, like
11 that guidance from Ulta or the issuance of additional stock.
12 That can offset even a really good earnings number. And
13 sometimes the defendant and his associates simply didn't know
14 what to make of the reports that they had downloaded. And you
15 know that from the Threema chat. Rumiantcev admitted to
16 Ermakov in 2018 that the two implement poor trading ideas, that
17 they have low-level competencies as traders, and that they
18 actually sucked at certain trading strategies. That's exactly
19 why they wanted to hire an analyst to help them, because they
09:56 20 needed someone who knew what they were doing, but they also
21 needed to keep the analyst in the dark. And that's why they're
22 talking about hiding the true source of the information by
23 mixing in fake documents with the real information.

24 Ermakov told Rumiantcev that he made mistakes buying
25 and selling shares on the exact same time. Another time

1 Ermakov had to explain to the boss that he had made an
2 erroneous trade in Grubhub. And once, Ermakov, in his own
3 words, was upset that he F'd up 30 to 40 percent wins that this
4 group could have had.

5 There was also a lot of information to sift through.
6 You saw how many downloads there were. There were
7 approximately 2,300 from Ms. Soma's account alone. And in this
8 chat, Ermakov estimates 200 to 300 potential choices, trading
9 choices, per quarter, and not all of them would be surprises.
09:57 10 Sometimes companies just meet earnings. They don't beat them,
11 they don't miss them. And that's not a company it would make
12 sense to place a bet on. There simply wasn't enough time to
13 digest all this information, and that's another reason they
14 needed to bring in an analyst to help them out, to get through
15 all the information that they were stealing.

16 But bad as they were at trading, the defendant and his
17 associates still managed to make astounding amounts of money.
18 The defendant personally turned that 2.1 million dollars into
19 21 million. He turned 4.5 million of his investors' money into
09:58 20 25 million, and kept 60 percent of that for himself. You saw
21 that at Exhibits 55, 56, and 57. These are the emails that
22 Rumiantcev sent to the defendant updating him on what the
23 investors were making and how much of that would stay with
24 M-13. "Client receives 40 percent net profit." "Client
25 receives 40 percent net profit." That's 60 percent right back

1 to the defendant. All told, with Irzak and Sladkov, these
2 traders turned about 9 million dollars into 90 million dollars
3 in a little over two years.

4 And that brings us to Sladkov and Irzak and the
5 devastating evidence that the FBI found on their computer
6 screens. Pictures stored in Sladkov's iCloud account, the same
7 account that had the M-13 chat app in it. Pictures that
8 matched up word for word with the earnings releases those
9 companies would later file. Take a look at Exhibit 24. This
09:59 10 is Snap's information, the company that makes -- or produces
11 Snapchat. It's the laptop with the Russian Olympic Committee
12 sticker, and that photo was taken on February 6th, 2018, at
13 8:13 a.m. You know that information, the same information we
14 did the bullet-by-bullet analysis -- we won't do it here --
15 wasn't filed until eight hours later, at 4:20 p.m. Sladkov and
16 Irzak should not have had that picture when they did, and you
17 now know where it came from. DFIN's consultant showed you the
18 log, a download over Julie Soma's account, rr52260, on February
19 5th, 2018, in the top left corner there, just one day earlier.
10:00 20 Sladkov and Irzak did it again with an 8-K for the third
21 quarter of 2018.

22 For SS&C Technologies, another DFIN client, here's the
23 SS&C data on Sladkov's laptop. It's in Exhibit 99. Agent
24 Hitchcock told you the photo was dated 1:42 p.m. on October
25 31st, 2018. Exhibit 82 is the 8-K and the Exhibit 99.1 that

1 SS&C actually filed with the SEC. That's a mouthful. It
2 didn't go to the SEC, though, for another two and a half hours,
3 at 4:13 p.m. Sladkov and Irzak should not have had that photo
4 on their laptop either. But you know who traded this time?
5 The defendant traded SS&C. And miracle of miracles, he bet the
6 exact same way that Sladkov and Irzak did. The defendant
7 didn't make any money on this deal, and you can see why in the
8 Threema chat.

9 On November 1, 2019, the day after Halloween, the day
10:01 10 after that announcement, Ermakov reported to Rumiantcev, "SS&C
11 is a problem stock." The men had missed that SS&C Technologies
12 would be issuing more stock, something that would drive the
13 company's share price down, even though the earnings
14 information had been a beat. And you heard from Mr. Clarke
15 that's exactly what happened. Ermakov thought SS&C was a
16 problem stock because he had expected the stock to go the other
17 way, because he had the earnings information that suggested it.
18 He had that earnings information because Sladkov and Irzak had
19 a picture of that 8-K before it was announced. And you know
10:02 20 where this information came from, a download of an Exhibit 99.1
21 over Julie Soma's account, from an IP address that came back to
22 Boston, 104.238.37.195.

23 Sladkov's companion, Olga, had a Tesla 8-K from
24 October 19th, 2017. The 8-K that was publicly filed the next
25 day on the right concerned entry into a material definitive

1 agreement. And here's what else you know. Sladkov and the
2 defendant's right-hand guy, Ivan Ermakov, the one who traded
3 the defendant's accounts using the SaxoTraderGO account,
4 communicated about the defendant's trading -- about the
5 defendant's stock trading.

6 On May 20th, 2019, at 7:29 a.m. Eastern, while Julie
7 Soma was still fast asleep on the West Coast, a hacker was
8 using her credentials to take a 99.1 of Kohl's, the department
9 store company. Mr. Clarke showed you that Sladkov and Irzak
10:03 10 started selling short about two hours later, at 9:50 a.m.
11 Rumiantcev started shorting 90 minutes later, and the defendant
12 and the three investors, a little bit after that. By the time
13 the market closed on May 20th, 2019, all eight traders,
14 including the defendant, were betting that Kohl's would go
15 down. Kohl's released its disappointing earnings the next day
16 at 7:00 a.m. The store missed estimates by 7 cents, and the
17 market did shoot down by about 12 percent. Bad news for
18 Kohl's, good news for the defendant, for Sladkov, Irzak, and
19 the others. That morning, after the news hit, the defendant
10:04 20 bought the shares back at a low price and made himself a tidy
21 \$51,000 on his short position. Sladkov, Irzak, and the others
22 who bet short along with the defendant made money too,
23 including Rumiantcev, the employee, and the investors. And you
24 know who else was communicating about Kohl's that day, sharing
25 screenshots that were tracking Kohl's market price? Ivan

1 Ermakov and Igor Sladkov, the defendant's best buddy and the
2 guy with the pictures of the confidential information on his
3 laptop.

4 And that was far from the only connection between
5 Sladkov and the defendant. Do you remember Avnet? Ermakov had
6 this image of Defendant's SaxoTraderGO app on his iCloud
7 account. It was an earnings miss, and if you look at
8 Exhibit 197B, all of the men started building their short
9 positions, the beginning of the chart, at the same time. This
10:05 10 was just a few days after a download of Avnet's information
11 from an AirVPN IP address from TM. Over and over and over
12 again, Sladkov, Irzak, the defendant, and his investors traded
13 the same stocks, in the same direction, at the same time. They
14 were in lockstep.

15 Between 97 percent and 100 percent of the time they
16 traded the same stocks, it was in the same direction. And you
17 have Exhibit 255 here to show you. This is a chart showing all
18 of the defendant's trading positions, short and long, on
19 earnings events, compared to the other traders, including
10:06 20 Saxo -- excuse me, including Sladkov and Irzak, who also traded
21 at Saxo along with the defendant, with Rumiantcev, and the
22 investors. When the defendant flips from green long to blue
23 short, blue short to green long, so does everyone else. They
24 all trade in the same direction together. That, members of the
25 jury, is a plan. That is an agreement.

1 And here's what else you know. On his iPhone, Sladkov
2 had the defendant's superencrypted chat app, the M-13 chat app,
3 so did Rumiantcev, and, of course, so did the defendant
4 himself. That's the defendant's company. You can't just go to
5 the App Store and get it. Someone gave Sladkov access to that
6 encrypted app. Sladkov also had documents about an M-13
7 product known as LAVR on his iCloud account, but he had it more
8 than a year before that product was announced publicly. What
9 was that product about that Mr. Sladkov had on his iCloud
10:07 10 account? Not just any product, a hacking product about those
11 RedTeam campaigns that the defendant was pitching to his
12 clients.

13 And if you look carefully back at Exhibit 255 on the
14 top of your screen, you're going to see something interesting.
15 Start at the bottom of page 1 of Exhibit 255 when you get back
16 to the jury room, on October 24th, two from the bottom of the
17 page, and read along. Capstead, Tesla, Snap, Apteo, Medpace,
18 MGM Resorts International, McGrath Rental Corp., PJT Partners,
19 Stifel Financial, Hess Corp., SS&C Technologies. Not only did
10:08 20 the defendant trade those in the same way as Sladkov and Irzak,
21 you will find a download over the Boston IP, 104.238.37, for
22 every single one of those companies.

23 And Judge Saris will instruct you that an Internet
24 communication from one computer to another is a wire in
25 interstate and foreign commerce. They were all there. The

1 defendant, Sladkov, and Irzak were trading on the same
2 information stolen over Julie Soma's account over a Boston IP
3 address. And Mr. Clarke's statistics back up this same
4 direction, same way, same time as well. He told you that
5 nearly every time that the defendant, Sladkov, Irzak, M-13,
6 Rumiantcev, and the investors traded on earnings, and there was
7 a download from DFIN, the download came first. When there was
8 trading with DFIN clients, it always came after a download from
9 DFIN. And Mr. Clarke told you that if there was no
10:09 10 relationship between those downloads and the defendant's
11 trading choices, you would not see a pattern like that,
12 download first, trade second more than a few times in a
13 million.

14 But you don't need a statistical expert to tell you
15 that, because your common sense tells you the same thing.
16 There is, in fact, a relationship between the downloads and the
17 trading, and you know what the relationship is. It was the
18 downloads that caused the trading. It was the downloads that
19 caused the defendant and his team to trade in the exact ways
10:10 20 that they did. The hacks and the downloads were the secret
21 sauce.

22 Take a look at the Tesla earnings announcement for the
23 second quarter of 2020. This is Exhibit 260B. The defendant,
24 Sladkov, and M-13 were all originally short on July 22nd, 2020.
25 That's at the left. They were betting the Tesla share price

1 would go down. And suddenly, in the middle of the day, at 1:12
2 in the afternoon on the 22nd, they reversed course. They
3 started buying Tesla. What caused the defendant and Sladkov to
4 switch direction? Well, you know that there was a download
5 from DFIN at 12:04 p.m. Just one hour and eight minutes later,
6 the defendant stopped betting against Tesla and started betting
7 for it. And Sladkov did the exact same thing at the exact --
8 almost exact same time. And you know what that download told
9 him. The earnings announcement made at 4:23 p.m. was a massive
10:11 10 win, a huge beat. Instead of that 18 cents per share loss that
11 the market was expecting, Tesla reported a \$2.18 profit. News
12 that would definitely cause the price to go up, and it did.

13 When the market opened on July 23 at 9:30 a.m., the
14 price was up 5 percent. The defendant, Sladkov, and their
15 associates started selling quickly, and they made good money.
16 161,000 for the defendant, 1.3 million for Sladkov, and money
17 for a few of the investors too. The same thing happened again
18 in January 2020. That's Exhibit 270A. There's another big win
19 for Tesla. The earnings were \$2.06 a share when the estimate
10:12 20 was only \$1.72. The stock shot up, that red spot there after
21 the earnings release, and the defendant and his team made big
22 money. 1.2 million dollars for himself, 4 million dollars for
23 Sladkov, and 1.6 million dollars for the investors, which you
24 know was another \$960,000 for the defendant.

25 Take a look at Exhibit 270B. Once again, on January

1 27th, 2020, the defendant and M-13 were selling short. They
2 were betting that Tesla's share price was going to drop, and
3 you can see that all day on January 27th and January 28th. But
4 then on the 29th, right in the middle of the day, just hours
5 before the market closed, the defendant changed his mind. He
6 starts buying Tesla. Sladkov, Rumiantcev, Borodaev, and
7 Uryadov also started buying, but switched the defendant from
8 short to long in the space of a few hours, another download.
9 This time, the day before he changed his mind and the day
10:14 10 before Sladkov joined him. Members of the jury, this is
11 devastating evidence of the scheme and devastating evidence of
12 a conspiracy.

13 Sladkov, the man with the M-13 chat app in his iCloud
14 account and pictures of confidential preannouncement earnings
15 information on his computer, and the defendant trading in the
16 same stocks, on the same days, in the same direction. They
17 even go from short to long together. And they do it, almost
18 each and every time, right after a download of confidential
19 information. This was a group of traders making money on the
10:14 20 same scheme. This is an agreement.

21 And since we're talking about the 104 IPs, let me
22 pause for a second on venue. Judge Saris will instruct you
23 that it's the government's burden to show venue by a
24 preponderance of the evidence. Our burden for everything else
25 is beyond a reasonable doubt, but here, more likely than not.

1 You've probably heard more than you will ever want to know
2 about IP addresses and data centers. Right? But here's what
3 you know. There were 113 downloads over IP addresses starting
4 with that 104.238.37 block, many of them in alphabetical order
5 while Julie Soma was sleeping, Ultra, Aquantia, BPC, Biomarin,
6 Bioline. The defendant traded in many of the companies whose
7 financials were downloaded over this very IP address. You
8 remember the list. Manhattan Associates at the top, Tesla,
9 Roku, Capstead Mortgage, and many others. We went down his
10:15 10 list of trades and down the list of downloads back and forth
11 with Mr. Frank and Mr. Clarke.

12 Jacob Wall, the now-pilot who used to work at
13 StackPath, he told you that StackPath leased that 104 block of
14 IPs from Web2Objects as part of StackPath's expansion into
15 Boston and other cities to get closer to their clients, to give
16 them faster Internet connections.

17 Mr. Wall took that authorization and sent it to Micfo,
18 a company that he'd worked with in many cities. He told you he
19 did it right away because those IP addresses were expensive and
10:16 20 time was money. That's where the network engineer -- do you
21 remember Aditi Shah? -- that's where she worked. And she told
22 you she sent that authorization right on to Cogent, the
23 Internet service provider for the datacenter here in Boston,
24 with instructions to direct the traffic to the IP prefix
25 104.238.37 in the location Boston. And Cogent wrote back the

1 same day. You know what they said? Done. The date was May
2 30th, 2018, five months before all of those downloads and all
3 of the defendants trading over that same IP address. And you
4 saw the record from ARIN, the Internet registry, putting the IP
5 just a couple blocks from here, 1 Summer Street, Boston,
6 Massachusetts.

7 And you saw paid invoices for that IP just two weeks
8 after the dates in October and November of those downloads.
9 You even saw a picture, from September 2018, from Markley's
10:17 10 datacenter where Micfo was storing server number 7. You see
11 the label there, BOS-SVR-7, which is where the invoice said was
12 where the computer was. And Mr. Wall told you that his
13 customers' experiences would have been bad if the IP address
14 wasn't in Boston, and he never had a single complaint.

15 The IP addresses are not part of some grand conspiracy
16 to try the defendant here in Boston. This was business as
17 usual. The testimony of those two witnesses, Jacob Wall and
18 Aditi Shah, tells you that those IP address were in Boston in
19 October and November of 2018, and all the documents from all of
10:18 20 those companies with absolutely no interest in the outcome of
21 this litigation support that testimony. And you know that,
22 from those IP addresses, the defendant and his crew used Julie
23 Soma's stolen account credentials to impersonate her and to
24 hack into DFIN's servers to steal the confidential earnings
25 information that was stored there, about Tesla, about Capstead

1 and dozens of other companies, and to trade on that
2 information.

3 And here's what else you know: The parties have
4 agreed that after his arrest, the defendant was brought
5 straight to Boston from Switzerland in December of 2021. In
6 the context of the conspiracy charge only, where the defendant
7 and his co-conspirators reached their agreement and executed so
8 much of it from outside the United States, that fact alone,
9 that he was brought here, is enough to satisfy the venue
10:19 10 requirement on Count One, the conspiracy charge.

11 And the evidence from those downloads and from the
12 defendants trading on those stocks and all the other evidence
13 in this case, including his own words and those of his
14 co-conspirators, tell you that the defendant joined this
15 conspiracy knowingly, intentionally, and willfully. He knew
16 what he was doing, and he knew that it was wrong.

17 For starters, while we're on the subject of the theft
18 of Tesla's information over the Boston IP, take a look at
19 Exhibit 152A where the defendant is talking to his two
10:20 20 investors, Borodaev and Varshavsky. Hours before the market
21 closes on October 24th, 2018, about 1:28 in the afternoon, the
22 defendant tells them to take a look at Tesla stock now and
23 tomorrow after 16:30 and how much it grows once the market
24 opens in the U.S. The defendant knows how much the stock was
25 going to grow because just as in those other trades in 2019 and

1 2020, there was a download of Tesla's Exhibit 99 over Julie
2 Soma's account earlier that morning, using the 104 IP addresses
3 in Boston. This was a deal that the defendant was trading on,
4 and he wants to prove to Borodaev and to Varshavsky that he
5 knew what was about to happen.

6 But those are far from the only statements that you
7 have in this case, and not the only ones you have from the
8 defendant and from his co-conspirators. When you go back to
9 that jury room, take a good look at Exhibit 46, the Threema
10:21 10 chat between Ermakov and Rumiantcev, and later with the
11 defendant and the unidentified man in blue. A chat that
12 participants thought no one would ever read. In it, the
13 defendant's two employees, Ermakov and Rumiantcev, discuss
14 their access to raw data and the need to hide it from the
15 analyst they hope to hire.

16 Take a look at this snippet from February 1, 2019,
17 where they're setting up the cover story. Mr. Ermakov -- I'm
18 sorry, Mr. Rumiantcev. "We will modify it somehow so that a
19 third-party analyst would think the materials have been found
10:22 20 in open source." Members of the jury, there's no need to make
21 someone think things have been found in open source unless they
22 didn't come from open source. And Rumiantcev confirms that for
23 you. It was raw material that would need to be adapted, and it
24 can't be passed as is. What kind of data can't be passed as
25 is? You know the answer. Data that's real. Data they were

1 afraid an analyst would start using on the side and profiting
2 from.

3 So Rumiantcev talks about creating fake documents to
4 mix in with the real ones. "Only we will know what forecasts
5 are based on real data." The real data and the raw materials
6 that they are talking about here were the data that they were
7 taking from DFIN and Toppan. And you know that the defendant
8 and Rumiantcev gave the same story to Saxo's Jeff Zorek in
9 April 2020. Mr. Zorek told you the defendant's trading was
10:23 10 suspicious because it was largely around quarterly earnings and
11 it was amazingly profitable, too successful.

12 At the meeting, the defendant and Rumiantcev told him
13 that bogus story about M-13's financial analysts and its magic
14 app, Preston. And the defendant falsely told the bank that he
15 didn't trade on any kind of confidential information. And Jeff
16 Zorek told you that the bank let the defendant continue trading
17 for months. Remember his words? He said there was no
18 definitive negative information that the bank could point to.
19 That Saxo call might have gone a lot differently if Jeff Zorek
10:24 20 had had a chance to read the defendant's supersecret Threema
21 chat. Lying to banks is not good faith.

22 In that same supersecret chat, Ermakov and Rumiantcev
23 talked about diversifying their trades across brokers so that
24 it would look less suspicious, and they talked about discussing
25 that concept with the defendant. "I already told Vlad, need to

1 talk about reducing accounts. Such a number of accounts with
2 the same securities, with the same broker is a bad idea."

3 And they worried that the SEC could end up monitoring
4 their trades. Look at what Ermakov said. The issue is that
5 the interactive broker demands information on transactions, and
6 the end, beneficiaries, because this broker is monitored by the
7 SEC. It continues. The defendant, in green, asked Rumiantcev,
8 "Why won't we open on interactive brokers by ourselves, just
9 for information?" The response? "Most likely from fear of
10:25 10 direct trading and client visibility for SEC." Rumiantcev
11 chimes in, "I mentioned it earlier, and the broker will see all
12 our transactions. The fuck we need this?" Ermakov's response,
13 "Broker sees it even now and can follow up on it. The
14 regulator," the SEC, "is much more important here." Ermakov
15 responds, "Europe in this regard" -- excuse me, the response,
16 "Europe in this regard is probably more preferable, though the
17 question remains to what extent they cooperate with the
18 American SEC." That's the speaker in blue. And then the
19 defendant responds, but he doesn't say, Hey, why are we worried
10:26 20 about the SEC? What's going on here? No. He says, "Our
21 people from Switzerland say that they're blocking accounts with
22 no questions asked for six months if the profits are above 20
23 percent." Keep in mind that the defendant was on a run that
24 would net him 900 percent.

25 Members of the jury, the SEC should not be a problem

1 for a company with a legitimate trading strategy. And hiding
2 from the SEC is not good faith. This exchange is more
3 devastating evidence of the defendant's knowledge that what he
4 was doing was wrong. And it's not just the Threema chat
5 either. Take a look at his WhatsApp conversations with
6 Ermakov. This is Exhibit 151. Right from the start, you know
7 this isn't some ordinary chat between friends. It begins with
8 them testing each other before they'll actually say anything in
9 writing.

10:27 10 The defendant wants to know, "What did Igor bring me
11 as a present?" And actually says, "I am testing you." It's
12 only when Ermakov tells the defendant that Igor brought him a
13 Tesla T-shirt that the defendant will even speak to Ermakov.
14 You know that conversations that start with strange passwords
15 and tests are not legitimate conversations. But, of course,
16 these weren't ordinary friends. They were so close they went
17 helicopter skiing together in April 2018 for Mr. Ermakov's
18 birthday, three months before the defendant started trading.
19 And to the World Cup together with the investors. So close
10:27 20 they went to dinner after dinner after dinner. So close that
21 the defendant shared with Ermakov pictures of the yacht that he
22 planned to buy and gave him a 100-million-ruble loan. That's
23 about a million and a half dollars at the time. So close that
24 the defendant bought Ermakov an apartment in August 2020, an
25 apartment that, as this chat makes clear, Ermakov was going to

1 own on paper. The defendant would be the real owner, and the
2 records would be destroyed. In addendum, it'd say I am the
3 signer and you are the owner. It will be destroyed on the
4 signing.

5 They were so close that Ermakov, Ivan Ermakov alone,
6 among the hundreds of employees at M-13, got a car matching the
7 boss's with a license plate with the company's number on it.
8 Think about that. An apartment, a 1.5-million-dollar loan, and
9 a matching car. Just Ermakov, who had no trading account, was
10:29 10 a lousy trader. You know exactly what Ivan Ermakov brought to
11 the defendant's table. They were so close that he even made
12 Ermakov blush when he said stuff like this, "Honestly, I get a
13 bigger kick when I check apartments for you with you. The fact
14 that we can walk home together and have a beer or play golf or
15 simply send everyone to hell knowing that you are close."

16 The response, "This truly sounds like a nice
17 declaration of love, like a declaration of love to a girl."
18 And they were so close that the defendant gave Ermakov the key
19 to his brokerage account at Saxo Bank with millions of dollars
10:30 20 in it. And he confided in his friend that his life's greatest
21 pleasures were his boat and trading. In the WhatsApp chat
22 there's talk about things exceptionally close friends do
23 together like going to the sauna and shopping for real estate,
24 but they also talk about their scheme. About the bonkers
25 profits that they're making for Borodaev and Varshavsky through

1 that scheme. Sasha, 693K on one million. That's one of them.
2 Boris earned 999K on 500K. Those are huge returns in seven
3 months. And the defendant's comment, "They don't even ask why
4 anymore."

5 Who asks a question like that? You know who. Someone
6 who knows why they're making that kind of crazy money, someone
7 on the inside. They even talk about watching the television
8 show "Billions." And they even joke about hacking. Here they
9 are talking about buying an apartment and that they're going to
10:31 10 earn the money, and then we can buy, which -- and that's in
11 June 2020, just a few months before he actually does buy him
12 that apartment. You just saw those texts.

13 And when Ermakov comments that he had better get to
14 work, the defendant says, "No need to. Just turn on the
15 computer" -- or "just turn the computer on and think a little
16 bit," to which Ermakov replies, "I already gave it a thought
17 yesterday. I will be thinking more today." Tears of joy
18 emojis. You know what turn on the computer and think a little
19 bit means: Hack and trade.

10:31 20 And here's how you know to a certainty that the
21 defendant knew what he was doing and that it was wrong. Take a
22 look at what the defendant saved to his iCloud account. This
23 is Exhibit 150 on the left, and 34 is the photo on the right.
24 A picture of an article in a protective plastic sleeve, the
25 kind that people use to keep important documents. Special

1 Agent Hitchcock told you that the article was printed in May of
2 2017, but the photograph was taken more than a year later, in
3 the summer of 2018. And you know what this article is about,
4 hacking into corporate networks, stealing the information in
5 them and making millions trading in the stolen securities
6 information.

7 Ask yourselves, members of the jury, who saves a
8 newspaper article about hacking and trading? Who puts it into
9 a protective sleeve? Who saves it to their iCloud account?

10:32 10 You know who does that. Someone who that summer, that same
11 summer, has started doing the exact same thing. Someone who
12 knows what he is doing is wrong, and not just wrong, criminal.
13 And that's why the defendant, Ermakov, and Rumiantcev could
14 speak freely with each other on a Threema chat when they
15 thought they were just a string of numbers and letters, and
16 they thought no one would ever read what they wrote. And
17 that's also why Ermakov and Rumiantcev got angry when the
18 defendant slipped up and used the investors' names.
19 Rumiantcev, "What the hell is this deanonymization?" That time
10:33 20 the defendant apologized and they went back to their chat.

21 But then he did it again, and this time it was worse.
22 He sent pictures of Varshavsky and Uryadov, the investors, to
23 the chat. Photos that anyone who got access to that anonymized
24 chat would be able to identify. He wrote, "What did we earn
25 today? Our comrades are wondering." And you remember what

1 happened next. "Vlad, you are exposing our organization. This
2 is bad," said Ermakov. Rumiantcev, "Vlad, stop sending to
3 Threema." The defendant, "So sorry." Ermakov, "And that's how
4 they get you and you end up as a defendant in a courtroom."

5 Members of the jury, the defendant knew he had screwed
6 up. He did a dumb thing, and he went on to delete the whole
7 chat. When Agent Hitchcock searched the defendant's iCloud
8 account, the Threema app was there, but this supersecret chat
9 was gone. No discussions of raw materials, fake documents,
10:34 10 finding brokers who wouldn't cooperate with the SEC. No
11 discussion of all their trading and spreading it among
12 different brokerages so that people wouldn't get suspicious.
13 It was all gone because the defendant didn't want you to see
14 it, because he knew, just like you know as you're sitting here
15 today, exactly what it meant.

16 For his actions, the defendant is charged with four
17 crimes. In Count One, he's charged with conspiracy to obtain
18 unauthorized access to commit wire fraud or to commit
19 securities fraud. In Count Two, he's charged with wire fraud.
10:35 20 In Count Three, unauthorized access to computers in furtherance
21 of fraud. And in Count Four, he's charged with securities
22 fraud.

23 Judge Saris will give you the instructions. Always
24 follow hers, but to prove conspiracy, the government does not
25 need to prove that the defendant actually committed the three

1 crimes with which he's charged, only that he agreed with one
2 other person to commit one or more of them. Conspiracy is an
3 agreement.

4 Wire fraud -- and those are the elements there -- an
5 agreement that the defendant willfully joined and the
6 commission of one overt act by any of the co-conspirators.

7 Wire fraud has four basic elements, and elements 1, 3,
8 and 4 on your screen here aren't seriously in dispute in this
9 case. First, there was a scheme to obtain confidential
10:36 10 information from TM and DFIN. Second, that scheme involved a
11 download of confidential information from Capstead and Tesla
12 and other companies using Julie Soma's user credentials.
13 Third, there were interstate wires, over the Boston IPs and
14 others, to DFIN and TM. But you know by now that the defendant
15 was a leader of this scheme who did have the intent to defraud.

16 Unauthorized access in furtherance of fraud has five
17 similar elements. Here again, four of which are not seriously
18 in dispute. Again, there was access to DFIN and TM's computers
19 over that 104 block of IP addresses here in Boston, using Julie
10:37 20 Soma's stolen user credentials, which were connected to the
21 Internet. The hackers took things of value, the confidential
22 business information of the publicly traded companies, and that
23 furthered this hack-to-trade scheme. So, again, as to his
24 intent, you know that the defendant was a leader of this scheme
25 who had the intent to defraud.

1 Because the indictment also charges aiding and
2 abetting, the government does not need to prove to you that the
3 defendant was sitting behind the keyboard for any of the
4 substantive counts. We have proven that he aided and abetted
5 others, like Ermakov, by participating in this scheme that he
6 wished to bring about.

7 And finally, securities fraud, four elements with only
8 one seriously in dispute. There were purchases and sales of
9 hundreds of stocks and securities as part of this hack-to-trade
10:38 10 scheme. The scheme involved interstate wires, the download of
11 material nonpublic information over those same 104 IP addresses
12 here in Boston, with the same misrepresentation about Julie
13 Soma's identity, the theft of her user credentials. You know
14 that the defendant here too had the intent to defraud as one of
15 the ringleaders of this scheme.

16 Common sense told Jeff Zorek that something was off
17 with the defendant's business. Zorek just didn't have that
18 Threema chat. He didn't have the Threema chat. He didn't know
19 about M-13's hacking credentials. He didn't have the full
10:39 20 picture of the defendant's trading. But you do. And like Jeff
21 Zorek, you also have your common sense. Common sense tells you
22 that no brand-new trader brings home 900 percent returns
23 trading only on earnings events and only in the stocks of
24 companies whose information has been hacked and only at the
25 time that those companies have been hacked, common sense tells

1 you that amazing trading run would not simply stop on its own
2 when the hacks were fixed. And common sense tells you that
3 it's wrong to hide from the SEC, and it's wrong to lie about
4 what you're doing.

5 Now that you've seen and heard all the evidence, you
6 know that the defendant did those exact things. He broke the
7 law. All the evidence in this case, the records and documents,
8 the chats and the testimony, lead to a single inescapable
9 conclusion: The defendant is guilty, beyond a reasonable
10:40 10 doubt, of each count in the indictment. Thank you.

11 THE COURT: Thank you. I think this would be a good
12 time for us to take our morning break. I'll see you back here
13 at 11:00.

14 THE CLERK: All rise.

15 JUROR: Still no talking about it?

16 THE COURT: Don't talk about it. Don't talk until
17 you've heard everything.

18 (Jury exits.)

19 THE COURT: Let me just say this -- we'll come back at
10:41 20 11:00, but you're ballpark, an hour?

21 MR. NEMTSEV: Hope to be less.

22 THE COURT: Totally up to you. Let's say an hour. So
23 that's 12:00. Let's say no longer than half an hour, 12:30.
24 That's when Mem ordered lunch for them. We'll have a brief
25 lunch and then come back around 1:00, probably, for the charge.

1 Okay? That's subject to change. Thank you. We'll just take a
2 quick 20-minute break.

3 (Court exits.)

4 (A recess was taken, 10:42 a.m.)

5 (Resumed, 11:03 a.m.)

6 THE CLERK: All rise for the jury.

7 (Jury enters the courtroom.)

8 THE COURT: Great. You may be seated. Mr. Nemtsev.

9 MR. NEMTSEV: May I proceed?

11:06 10 THE COURT: Yes, you may.

11 We need another notepad. Are you completely out?

12 (Discussion off the record.)

13 THE COURT: Great. We are all ready.

14 CLOSING ARGUMENT BY MR. NEMTSEV:

15 MR. NEMTSEV: Good morning, ladies and gentlemen of
16 the jury. We met two weeks ago when we started this case, and
17 I want to thank you from the defense team for sitting here and
18 listening to this evidence. I know that you all have
19 commitments at work and at home. I want to thank you for
11:08 20 taking the time to listen to this case. We all understand that
21 you're sacrificing a lot by devoting your time to being here,
22 and for that, we thank you.

23 The openings that we gave you was a preview, a promise
24 of what evidence either the government or the defense expected
25 to produce during the trial case, during the trial part of the

1 evidence. Mr. Frank said the government will prove that
2 Mr. Ermakov, a friend of Vlad's, was the hacker, that he stole
3 confidential information from two major United States-based
4 filing agents, and gave Vlad access to that information about
5 the financial performance of companies that those filing agents
6 serviced so that Vlad can trade on the basis of that information.

7 I promised you that there would be gaping holes in the
8 government's case, that there would be no witness, no message,
9 no email that shows that Vlad knew anything about a hack or the
11:09 10 fact that any trading was based on confidential, stolen
11 information. And in fact you didn't see a single message, a
12 single picture, a single earnings report, or even the words
13 "DFIN" or "Toppan" in any conversation with Vlad, including the
14 130,000 ones that they seized through his iCloud.

15 Many legal systems around the world presume that if
16 the government brings an accusation, then a defendant is
17 guilty. That's the presumption of guilt, that a defendant in
18 these legal systems must prove his or her innocence to the
19 prosecutor. Not in this country, not in this courtroom. The
11:09 20 government failed to prove what they promised, that Vlad
21 knowingly, willfully, and intentionally engaged in hacking or
22 trading on the basis of nonpublic material information as a
23 result of these hacks. The most sacred principles that make
24 our legal system the envy of the world is that the accusations
25 are not evidence. Vlad is presumed innocent.

1 I told you at the beginnings of this case, and I'll
2 tell you now, we have no burden to produce any evidence, no
3 burden to testify, no burden to prove his innocence when the
4 prosecutors and agents of the most powerful federal law
5 enforcement agencies have failed to prove their case with
6 convincing quality evidence, like witnesses and documents, not
7 theories and inferences, sufficient to prove each and every
8 element of every charge beyond a reasonable doubt. These
9 principles are the very foundation of freedom from reckless and
11:11 10 false accusations. These are the principles that protect
11 someone from the ultimate horrors of our legal system, that an
12 innocent man or woman will be convicted of a crime that they
13 did not commit. We'll navigate through the evidence and see
14 whether it creates one or many reasonable doubts based on the
15 government's failure to prove to support their claim that Vlad
16 is guilty of hacking and trading based on hacked information.

17 If Vlad wasn't a Russian citizen, I would have said
18 that he accomplished the American dream. He grew up poor. He
19 worked since the age of thirteen. He worked his way through
11:11 20 law school and then business management in school, and started
21 a successful tech company that provided media monitoring
22 services, cybersecurity services. That's all that we strive to
23 be, to be innovators, to start and run successful businesses.

24 There's no dispute that M-13 was a functioning,
25 successful business. No dispute that it was in operation for

1 ten years. There's no dispute that it had more than 300
2 employees. There's no dispute that Vlad was overseeing major
3 projects and staffing them with dozens of engineers and other
4 IT professionals that worked for M-13. There's no dispute that
5 M-13 had private and government contracts. There's no dispute
6 that the company's main product line was a media monitoring
7 service that reviewed, categorized, and analyzed 40,000 media
8 publications at a given moment.

9 The government doesn't even dispute that Vlad
10 continued to innovate and break into the fintech space; one way
11 through Preston, a system designed to analyze and trade stocks
12 based on market sentiment. The government doesn't dispute that
13 the system was available on the Apple Store, that it was tested
14 by Saxo Bank employees, who openly told Vlad and his company
15 that they liked it. There's no dispute that what Vlad was
16 building with Preston was something unheard of.

17 Mr. Zorek, one of the only unbiased witnesses in this
18 case, who was dragged from his retirement home in Florida to
19 testify before you, testified to you that he believed Vlad's
20 Preston application was viable, that others on Wall Street have
21 been working on what he was doing for years, and he even
22 compared Preston to a different product that he was familiar
23 with, Estimote.

24 The government argued to you just now that Preston is
25 a cover, but during the Saxo call, Vlad was the one who

1 insisted that access be given to the Saxo Bank employees. Who
2 creates an app, puts it on the Apple Store, who spends those
3 resources in order to create a cover? Who creates a cover app
4 that they don't intend to use that Saxo Bank employees actually
5 liked and considered using internally? That's one hell of a
6 coverup. It wouldn't make any sense.

7 You heard that the information generated by social
8 media is potentially a more powerful predictor of the stock's
9 price movements than even the fundamentals. A tweak from Elon
10 Musk could send the stock flying or falling. An investor's
11 belief in a stock like Gamestop could shoot its price through
12 the stratosphere. This is the new age of securities
13 investment, and Vlad was seeking to be at its forefront.

14 There's no dispute that Vlad strived to compete
15 against the largest companies in the world, to grow, to expand.
16 His company, like Kroll and StoneTurn and many other companies,
17 provided penetration testing as one of its many services.
18 There's nothing illegal about it. It's standard practice in
19 the cybersecurity industry. And, of course, having a media
20 monitoring application gives you an edge in this informational
21 race. Obviously Vlad would have explored these additional
22 business opportunities. It's not criminal. This is what
23 capitalism and entrepreneurship is built upon, innovation and
24 disruption. M-13 was not a cover, and Vlad was not motivated
25 by greed. He had wealth and success long before a single stock

1 transaction was placed in his accounts. He didn't need the
2 money.

3 But M-13's prominence in the tech sphere unfortunately
4 also made him a convenient government target. He's wealthy,
5 he's Russian, and he owns an IT company that provides media
6 monitoring and cybersecurity service to the Russian government.

7 And as I said at the start, there's nothing illegal
8 about any of those things, but those were the reasons that the
9 government targeted him. They predetermined that a hack means
10 that it must have come from Russia, regardless of whether it's
11 true or not. They worked to fill that story, that theory, and
12 no one more conveniently fit that theory than Vlad, the wealthy
13 Russian IT professional.

14 The government tried to deny it. Agent Hitchcock
15 testified that he and his colleagues didn't look at M-13's
16 website until Vlad's arrest. If you believe him, you have to
17 ask, what were dozens or almost two dozen agents doing for
18 these year and a half or two years that they were investigating
19 this case? The truth is, Vlad and M-13 are such a convenient
11:17 20 target that the government didn't even bother to think about
21 any other explanation. Since the start of this criminal
22 investigation, the government has been pursuing the theory that
23 it was either Vlad or someone close to him that has to be the
24 hacker and there's no other explanation, ignoring all the
25 evidence that points in the other direction; but as we go

1 through the evidence together, you will hopefully see what I
2 see.

3 I do want to bring up one important point. Our legal
4 system is adversarial. The prosecutors in this case, the FBI,
5 the SEC, and every other government agent, is not here to help
6 the defense. They're not here to present facts that are
7 favorable to both sides. They're here to win their case as
8 much as I am here to win mine. They believe in Vlad's guilt
9 since the day they learned of him. They've been working
11:18 10 tirelessly to convict him. We saw this during questioning, and
11 no one, not a single agent, would give me a straight answer.
12 It's not because they don't know how to, it's because they
13 don't want to, because giving a clear and accurate answer would
14 hurt their positions.

15 For starters, there's no evidence that Vlad engaged in
16 any hacking. The evidence was conclusive. Mr. Hartvigsen
17 testified to you that he had a team of twelve people responding
18 to DFIN's data breach. The earliest evidence of a hack that
19 they located was from September of 2017 with more complete log
11:19 20 files dating back to February of 2018, and he testified
21 conclusively that the dates of the last intrusion was
22 August 20, 2018.

23 Vlad had no motive, no incentive to engage in a
24 hacking in September of 2017, given he didn't have a trading
25 account for almost ten months. And the government doesn't

1 allege that Vlad hacked anything himself. There's no evidence
2 that he had the technical skills to personally do a hack. He's
3 the person at M-13 responsible for attracting capital and
4 investors and getting business. He's not the technical
5 director of M-13, nor is he himself the person who knows how to
6 pick and trade stocks. It was Ermakov and Rumiantcev who had
7 the exclusive decision-making power to buy or sell stocks in
8 Vlad's account, and obviously he wanted updates. It was his
9 money that was being invested. You don't give someone millions
11:20 10 of dollars of your money and not ask for updates as to what is
11 happening with it, but there's no evidence that he was deeply
12 involved in the research or the trading.

13 In its opening argument, the government promised to
14 you to prove that Ermakov was the hacker. These are the words
15 from just two weeks ago. There's no dispute that Ermakov
16 worked for M-13. This is an employee list of all M-13
17 employees assigned to just one single project. It includes 46
18 people, nearly 20 engineers, 20 other professionals. There's
19 no dispute that what's listed in this document is true. M-13
11:21 20 was a large company. It had many employees, both technical and
21 administrative. They worked on large projects. There's no
22 dispute that Ermakov was the Deputy Director General of M-13.
23 There's no dispute that Mr. Rumiantcev was the Deputy Director.
24 They were clearly part of the management team. But there's no
25 evidence that Ermakov had the level of sophistication and

1 computer wizardry necessary to pull off this complicated
2 computer intrusion. If he was sophisticated, he would have
3 been prominently featured amongst the various IT professionals
4 that M-13 had at its employment.

5 This is a proposal that Agent Hitchcock read a portion
6 of. It's Exhibit 141. This is the last page. This is a
7 proposal that Vlad submitted to a major company to provide
8 penetration testing services. You can read it. It's 16 pages.
9 It's detailed and extensive and includes all of the information
10 about their services. The last page includes a list of experts
11 that are assigned to the project. Ermakov is not the head of
12 the Informational Security Department, or the head of the
13 Penetration Testing Unit, or the head of the Security Analysis
14 Unit, or the head of Audit and Consulting Unit. The only
15 evidence that Ermakov is responsible for hacks is in one IP
16 address that overlaps with DFIN logs and was located on his
17 iTunes application.

18 This is the log file showing that the IP address in
19 May 9th of 2018 was used by Mr. Ermakov to update his Mac apps.
20 We know from Mr. Roberts' testimony that there's simply not
21 enough IPs in the world to accommodate every person, every
22 business, every internet-connected device. We have to share
23 them with our neighbors, with our friends, with strangers, and
24 everybody else. He testified there could be thousands, tens of
25 thousands, hundreds of thousands of people using the same IP

1 address every day. You and I likely have the same IP address.
2 It's not strange. It's just the way the Internet works.

3 So what do we know about this IP address specifically?
4 Nothing. You didn't receive any information about it. You
5 have not heard any testimony about who it belongs to, who
6 serviced it, or whether it was associated with any VPN. You
7 know it was an AirVPN address; it was not a StackPath address.
8 The evidence relating to this IP address is just absent. Why
9 didn't the government present any evidence about the IP? I
10 don't know. Ask yourself, though, was it likely that this IP
11 was shared by hundreds of thousands of people at the same time?
12 And based on Mr. Roberts' testimony, I believe it's an
13 affirmative "yes."

14 There's another hole in the evidence that I don't
15 understand and I can't even begin to explain to you. We all
16 know that iTunes means you have a Mac. You can't update an
17 Android or a Windows from the Apple iTunes store. It's common
18 knowledge. It makes perfect sense. You're talking about two
19 completely different programming ecosystems. Just like an
20 iPhone user doesn't update their phone from a Google Playstore,
21 PC users don't update their applications from iTunes.

22 Mr. Brawner from Kroll and Mr. Hartvigsen from
23 StoneTurn, whose twelve-person team investigated the intrusions
24 at DFIN, they both told you that the intrusions took place
25 using a Windows computer. The computer intruding and Ermakov's

1 Mac are completely two different computers. There's no
2 evidence that Ermakov ever used a Windows laptop. The only
3 people in this case that used a Windows computer are people who
4 took selfies of themselves with earnings reports on their
5 Windows laptop, Mr. Sladkov and Mr. Irzak.

6 If there's a person that the government wants to point
7 the finger at as the hacker, as the perpetrator, they shouldn't
8 point the finger at Ermakov or Vlad. They should point the
9 finger at Sladkov. He's the only person in this case to use a
10 PC, the only person to have an earnings report prior to its
11 release, not on one occasion, not on two occasions, but on
12 three occasions. He's the only person to have a trading
13 account in 2017, which is the start of the intrusions. This is
14 reasonable doubt about the government's theory. Their theory
15 is dependent on Ermakov being the hacker because he is close to
16 Vlad, but the evidence doesn't support it.

17 Mr. Hartvigsen told you that they don't have log
18 files, but they did have some evidence that the intrusions
19 started as early as September of 2017. The only person who
20 could have done anything with that information was Sladkov.
21 The only person who had any motive to hack a filing agent at
22 the time was him. Vlad didn't have a trading account for
23 almost a year from then. Ermakov never had a trading account.
24 The only trading that Ermakov did was in Vlad's accounts and
25 the accounts of Vlad's investors. And as you review the 4,000

1 Threema messages, you'll see that it's Ermakov and Rumiantcev
2 discussing what trades to place and what to place them on.

3 It wouldn't make sense for Vlad to hack or order
4 somebody to hack the filing agents in this case and not do
5 anything with that information for almost a year.

6 There's another important fact. Vlad only met Ermakov
7 in March of 2018. That was the first time that Ermakov was
8 added to his contact list on his phone. The first time that
9 they went anywhere together, you saw, was April of 2018, and
11:28 10 even after they met, Vlad still had no trading accounts until
11 many months later.

12 And you heard that Vlad and Ermakov were close. They
13 went to the sauna together; they had deep conversation. It was
14 a bromance, clear and simple. But look at the dozens of charts
15 that Mr. Clarke created. In almost every single instance, the
16 first person to place any transaction following a download is
17 Mr. Sladkov, at times not by hours but by entire days. If
18 Mr. Ermakov was the hacker, if he was the one that obtained the
19 reports, ask yourself, why would Sladkov be the first person to
11:28 20 know? Ermakov was close to Vlad, not to Sladkov. It wouldn't
21 make any sense for Ermakov to prioritize Sladkov over Vlad with
22 this information if he had it. Vlad was his employer. He paid
23 him. There's no evidence that Ermakov received a birthday
24 card, let alone a payment from Sladkov. There's just no
25 evidence that Ermakov ever hacked or had an earnings report in

1 his possession.

2 And what else do we know about Sladkov and Irzak? Not
3 much, in all honesty. We spent more time talking about yachts
4 and vacations to the Maldives than these two key individuals in
5 a five-person conspiracy. All we know is that Sladkov and
6 Irzkov lived in a different city 450 miles away. Sladkov knew
7 Ermakov, but that was the extent of the evidence. Evidence of
8 their friendship was essentially nonexistent. They messaged on
9 WhatsApp, sent each other pictures. Some of those pictures
10 were ones that Vlad sent to Ermakov, although there's no
11 evidence that Vlad ever asked or knew that Ermakov forwarded
12 those pictures to Sladkov. That's the entire extent of the
13 friendship between Ermakov and Sladkov. Sladkov never attended
14 his birthday party -- we watched a video of it -- or other
15 events that Ermakov and Vlad attended together. The other
16 pictures that you saw shared between Ermakov and Sladkov were
17 the ones that were put into evidence, a handful of pictures at
18 best, and none of them include a picture of an earnings report.

19 The overlap in trading is a red herring. Sladkov and
11:30 20 Irzak traded many more companies and events than Vlad. Irzak
21 had 484 trades around earnings, but they overlapped only a
22 little more than half the time. This is Mr. Clarke's charts.
23 You can see trading episodes for Mr. Sladkov are 375? His
24 chart 255 only indicates that 227 of Sladkov's trades were in
25 the same stocks in the same direction out of the 343

1 earnings-based trades that Vlad made. It's not that every
2 single transaction in every single stock overlaps. It's a
3 little more than half.

4 Sladkov and Irzak are also the only ones with
5 five-figure returns. Sladkov made more than 11,000 percent
6 return. Irzak made more than 21,000. That's an outlier
7 compared to every single other person that traded based on
8 earnings in this case and this time period.

9 And I don't know whether Sladkov and Irzak had DFIN or
11:32 10 Toppan or purchased this information from somewhere else. It's
11 not my job to investigate that, but the evidence in this case
12 tends away from the government's theory that Ermakov was the
13 hacker and Vlad was his supporter. The evidence does not
14 compellingly demonstrate that Vlad, or anyone else on his
15 behalf, hacked these two filing agents, or that he or Ermakov
16 ever had possession of an earnings report, or that Vlad had
17 knowledge that any transaction was based on material nonpublic
18 information.

19 There's also no tie to M-13 and the alleged hacking.
11:32 20 Again, there's no evidence that M-13 or Vlad were involved in
21 any intrusions when they started ten months prior to Vlad's
22 opening up a trading account. The intrusions didn't change
23 over time. It was the same Julie Soma account that was being
24 accessed in early February, pre-Vlad's opening of the trading
25 account and through January, 2020.

1 The government tries to tie M-13 to AirVPN addresses.
2 That's such a stretch of the facts. Mr. Roberts expressly told
3 you that the records show that it wasn't M-13 that was
4 connecting to AirVPN; it was AirVPN that was trying to connect
5 to M-13 in January of 2020. There was one sole response from
6 the M-13 server. I don't know what it is. It's not my job to
7 investigate it. All I can say is, there's no evidence that the
8 short communication transmitted data so small, it could hardly
9 contain a tiny picture. It could have been related to any
11:34 10 intrusion, given how much information was purportedly downloaded
11 and obtained from these two filing agents.

12 Mr. Hartvigsen testified to you that AirVPN was just
13 one of the 26 ISPs and one of 110 IP addresses that matched to
14 intruders. There's no evidence that Vlad or M-13 used any
15 single one of them.

16 With all its enormous power to get documents and bring
17 witnesses before you, which you saw when they took Ms. Shah
18 from North Carolina, located her and placed her before you in
19 the matter of a day, the FBI didn't even attempt to ask AirVPN
11:34 20 and StackPath, or any of the other 24 ISPs, whether Vlad or
21 Ermakov or M-13 had an account there. Mr. Wall, the individual
22 from StackPath, he testified to you that there was no free
23 service back then. In order to get onto StackPath's servers,
24 you needed a name, an address, a credit card. When I asked
25 him, "Did you check your records for Mr. Ermakov, or

1 Mr. Klyushin, or Mr. Rumiantcev, or M-13?" he said, "The FBI
2 never asked me that question."

3 They put in a statistician to confirm their theories.
4 Mr. Clarke's job was not to analyze the data and independently
5 determine whether they had made the correct decision. They
6 gave him the data that they wanted him to use. They told him
7 the dates that they wanted to use. The dates that they told
8 him don't match the testimony of the witnesses that testified
9 to you about the intrusion. I told him to statistically prove
11:35 10 that this trading wasn't random. Why randomness is the
11 baseline for trading in stocks and making decisions to buy or
12 sell stocks is beyond me. The stock market is not random.
13 Selecting stocks and deciding to buy or sell is not random.
14 You know that. I know that. Otherwise, thousands of hedge
15 funds and investment banks and money managers, they'd be out of
16 work.

17 The government had a predetermined conclusion that
18 they had to use math to try to satisfy. They're hoping that
19 the confusing, incomprehensible interpretation of what a
11:36 20 p-value is was enough to convince you that there could be some
21 possibility that Vlad's trading was related to a hack.

22 A while back I read a book. It was called
23 "Freakonomics." It was an economist using statistical models
24 to tie the most random events in the world, and it just went to
25 prove that correlation isn't causation. And that's the same

1 thing that Mr. Clarke did: He used statistics to create a
2 piece of evidence to present to you because they lack all other
3 actual evidence. They had to fill their holes, and they used
4 math to do it. But math and statistics are not the direct
5 evidence that you would expect to see in order to deprive a
6 person of their liberty and their innocence. The issue is not
7 that Vlad made a lot of money. It's why.

8 The question is what direct evidence they have that he
9 knew that any transaction was placed on the basis of material
10 nonpublic information. This isn't a civil case where someone
11 is suing someone. This is a criminal case. What distinguishes
12 a criminal case is not that just the act of buying the right
13 stock, but that the act was done with knowledge that Vlad
14 actually and knowingly possessed confidential information,
15 meaning the stolen earnings reports. It's the pivotal element
16 in this case.

17 They seized his iCloud. He wasn't expecting a
18 seizure. He was thousands of miles away from the
19 investigation. Think of what they would find if they had
11:38 20 seized your iCloud and searched your iCloud. And despite that,
21 there's not one scintilla of evidence that Vlad had any access
22 to the hacked confidential information.

23 And as you saw, begrudgingly, Agent Hitchcock
24 confirmed that to you. Mr. Roberts confirmed that to you.
25 Hundreds of thousands of texts, phone logs, Web searches,

1 pictures, and there is nothing. The fallback is that this is
2 sophisticated actors, but this is just another way of saying
3 that they didn't find anything that they expected, and don't
4 want to blame themselves for pursuing the wrong guy. It's
5 inconsistent with their arguments that Vlad's team was so
6 incompetent, they couldn't figure out which of the 3,000
7 earnings reports that were serviced by the filing agents to
8 trade in. They couldn't figure out apparently whether the
9 numbers were better or worse. They couldn't read a couple of
11:39 10 lines down to see what the guidance was. If Vlad wanted to
11 trade on the basis of material nonpublic information, he could
12 have dedicated 10 percent of the resources of M-13 to review
13 and check and analyze every single earnings report that was
14 contained within the files of the two filing agents.

15 The government also presented a chain of inferences
16 that took days to explain about how the Wan Connie account and
17 its Bitcoin transactions tracked back to other Namecheap
18 accounts that purchased domain names. I can't begin to explain
19 to you how attenuated that connection is, but I can tell you
11:40 20 one thing, and it's something that we all know: Every person
21 in this room is connected by 6 degrees of separation. It's a
22 common fact. If you go six steps out, everyone is connected to
23 each other in the world, and the digital world is no different.
24 If we had Bitcoin accounts and the government tracked back far
25 enough, you would probably be able to link every single one of

1 us to those same domain names.

2 When you start off with predetermined conclusions,
3 you're seeking to confirm that conclusion, not evidence to
4 contradict it, and that's what they did in this case. They
5 started off with a predetermined conclusion that the hacker
6 must be Vlad or someone very close to him, and every other
7 single part of their investigation was intended to confirm that
8 initial belief rather than contradict it.

9 It's no hidden secret. You have the Threema chat. It
11:41 10 wasn't deleted by Mr. Rumiantcev. You can review all of it.
11 You can see that the Threema chats span almost a year of
12 trading. From the start of the chat group in October of 2018,
13 it was solely Mr. Ermakov and Mr. Rumiantcev discussing which
14 positions to open and which positions to close. The only
15 updates that they ever sent Vlad were the financial ones
16 relating to trading profits and losses.

17 Vlad was brought into the chat in May of 2019, almost
18 seven months after it was created, and even after he was added
19 to the chat -- and you could look for yourselves -- he
11:41 20 participated very minimally. He tells the group openly that
21 he's unable to help in active trading. It was a different chat
22 in the WhatsApps where Vlad asked Ermakov, "Do you need help
23 with Saxo?" and Ermakov tells him "No." He tells the group
24 openly what he believes his trading is based on: It's based on
25 his monitoring system, 18,000 messages per week.

1 These are chats, July of 2019. I showed them to you
2 during the opening. They're chats between Mr. Rumiantcev and
3 Mr. Klyushin discussing the difficulties of collecting and
4 analyzing data from Twitter. Mr. Rumiantcev says, "We have the
5 Tesla collection set in Twitter at 100 percent. It's under
6 tickler only. We get 11,000 messages per week." They
7 discussed the difficulties of analyzing all of that
8 information, and Vlad tells him, "We're trading thanks to this
9 know-how only. Everything is done by neuron networks plus
11:43 10 monitoring."

11 This isn't a coverup. This is months. This is July
12 of 2019. The conversation with Saxo Bank takes place in April
13 or March of 2020. This is many months before that. This isn't
14 in preparation for any call. This is what Vlad believes. This
15 is what is in his mind. No one tells Vlad in that chat, none
16 of the other participants tell him, "What are you talking
17 about? This isn't how we do it. Why are you making us analyze
18 all of these Twitter messages? We trade on hacked reports.
19 You know that."

11:44 20 And Vlad had no reason to lie to a single person in
21 this chat. The government will tell you that he had a reason
22 to lie in this chat: All of the people in this chat are
23 supposedly his coconspirators. They are alleged to be active
24 participants in this hacking and trading scheme. Why would
25 Vlad say this unless he believed that it was true? If Vlad was

1 trading based on hacked information and he knew it, why would
2 30 percent of his trades in the period of the hack be in
3 non-earnings-related events? Why would he not stop his team
4 from trading after the hacks end? The only explanation is that
5 he is not basing his trading on the existence of the hacks,
6 that he did not know that any material nonpublic information
7 was being used to place his trades.

8 Another issue: If Vlad was the one that was making
9 investment decisions and purchasing and selling, why is there
10 trading in his accounts after his arrest? Agent Hitchcock did
11 not tell you that he had Internet access or a computer from a
12 Swiss prison. Those trading decisions were being made by
13 somebody else. It's not enough that transactions took place.
14 It's not enough that money was made. You'll hear that Vlad had
15 to know that the information that was being used to trade came
16 from the results of a hack, and there's no witness, no email,
17 no message that confirms that critical fact. The government
18 obtained 43 search warrants, had assistance from the SEC, had
19 international law enforcement assistance, issued dozens of
20 subpoenas, had assistance from Saxo Bank, and there's not a
21 single piece of evidence that Vlad knew that the basis of any
22 stock transaction was hacked information.

23 Vlad's iCloud, like all our iClouds, are repositories
24 for virtually limitless amounts of information. There's no
25 evidence that he was hiding anything. It was all out in the

1 open. The government found his most intimate conversations
2 with his wife, his children. Where is the communication or
3 email or picture that shows that Vlad possessed, reviewed, or
4 used material nonpublic information? Nothing out of the 95,000
5 pictures or the 130,000 messages proves it. This was confirmed
6 by the FBI and Mr. Roberts, who conducted his own searches of
7 Vlad's iCloud. Where's the proof that anyone told him that the
8 source is insider or hacked information? There simply isn't
9 any. Where's the information that Sladkov told Ermakov that
11:47 10 the source of information was a hack? Where is the evidence
11 that Ermakov told anything to Vlad? Where's the proof that
12 Vlad, who told one of the investors about Tesla going up on
13 October 24, 2018, related to material nonpublic information
14 rather than something else, including potentially a deep dive
15 in a market study? There's nothing.

16 The government admits that Vlad did not hack himself.
17 They guessed that someone told him something, but you don't
18 guess people into prison.

19 Vlad wasn't hiding his strategy either. The Saxo call
11:47 20 that we listened to was a call that was initiated by Vlad and
21 his trading team to get enhanced services. The first part of
22 the call they asked for more leverage, wanted larger trade
23 windows; they wanted to get additional power of attorneys over
24 accounts. You don't get on a call with a major investment bank
25 in order to get enhanced services when you're trying to hide

1 the fact that you're trading on insider information or hacking
2 major U.S. filing agents.

3 When it's not proven, it's not guilty. The government
4 can't prove its case through possibilities or probabilities.
5 Even proof by clear and convincing evidence, a different legal
6 standard, is not enough. You must prove these allegations
7 beyond any and all reasonable doubts. That is what is required
8 under the law. It has to be a smooth ride, not filled with
9 gaping holes.

11:48 10 The government showed you chats about picking a
11 brokerage to reduce the scrutiny of the SEC, puts a lot of
12 weight on it, I get it. But you heard it yourself: In the
13 securities industry, the SEC is the IRS. An audit from the SEC
14 to a trader is the same as an audit from the IRS to us. Nobody
15 wants to be part of an audit. The same way that I tell my
16 accountant to make sure that I don't get audited, that's the
17 same reason that traders and trading firms try to minimize
18 their scrutiny by the SEC. You can go to State Street downtown
19 or Fidelity. I don't think a single banker or employee will
11:49 20 tell you that they welcome the SEC to come in and look at their
21 transactions.

22 Mr. Zorek told you that Saxo Bank did not take on U.S.
23 clients for that very reason. The regulation and scrutiny it
24 brings is too inconvenient to justify the costs. The nine most
25 terrifying words in the English language are "I'm from the

1 government and I'm here to help." And imagine hearing that if
2 you're Russian.

3 Their transactions were already scrutinized. They
4 were already designated as being from a high-risk country.
5 They had difficulty getting access to Bloomberg terminals
6 because they were Russian. Why wouldn't they attempt to find a
7 broker that reduced their chances of getting audited? Vlad
8 knew that 20 percent returns on the transactions would mean an
9 automatic closure just because he was Russian. Why would
11:50 10 anyone want to deal with that?

11 And even then he says that the SEC, in that chat, that
12 the Interactive Broker complies with the SEC, gives them the
13 information. But you know what? He still used Interactive
14 Broker. It was one of the trading accounts that was open in
15 his name. It was one of the accounts that trades got placed
16 in. It wasn't so much about evading detection as it was making
17 sure that his business runs smoothly.

18 The last message in the Threema chat was about
19 supposedly exposing the organization, but it was not exposure
11:51 20 of criminality that they were discussing. It was exposure
21 about the identities of the investors. That last chat was not
22 the only time that it happened. Take a look. Months earlier
23 they had the same thing where Vlad disclosed the names of the
24 investors in the chat group, and they yelled at him for doing
25 that, and he said, "I'm so sorry. I'm just here for finances."

1 And Rumiantcev did not believe that chat, despite what he said.

2 There's an additional constitutional issue that you
3 will need to resolve. It's important. It goes to the heart of
4 protections that a person cannot arbitrarily be put on trial in
5 any place that the government wants. As Judge Saris will tell
6 you, Vlad can only be tried in a place that has a meaningful
7 connection to the allegations. There's no dispute that Vlad
8 was not in Massachusetts at the time of the charged conduct.
9 There's no dispute that the two filing agents are headquartered
10 outside of Massachusetts or that their servers are located in
11 other states. The only meaningful connection alleged is the
12 use of this Boston IP address in connection with an intrusion
13 into DFIN's servers from October to early November of 2018.
14 It's the 104.238 IP address that no one can prove was in
15 Boston.

16 This constitutional protection goes to the very heart
17 of the establishment of the United States. It emanates from
18 wanting to protect American citizens and others from the
19 arbitrary decision of governments to pluck individuals from
20 their homeland and try them thousands of miles away. And it
21 was what the British before the Revolution used to do, and it
22 was for those reasons that these constitutional protections
23 were put in place.

24 I promised you that you will not hear, and you did not
25 hear, any evidence that Vlad used that IP address. Despite

1 Mr. Wall from StackPath telling you that you needed to sign up
2 with your name, address, and credit card information, the FBI
3 made no effort to obtain any user data or confirm that Vlad or
4 M-13, or anyone else involved, had an account there. There's
5 no evidence that the Boston IPs, the 104.238 IPs, overlap with
6 any of the IPs that were used by Vlad or Ermakov or Rumiantcev
7 or M-13.

8 There's also no clear evidence that the server was in
9 Boston. This IP address was registered to a StackPath
10 subsidiary called StrongVPN. You heard testimony that
11 StrongVPN has a status page where it indicates where servers
12 are available. That page contained no reference to a Boston
13 server in September of '18 or March of 2019. Of course there
14 was no complaint about the server; there was no server. It was
15 never offered as one of the services by StrongVPN. But the
16 matter is more complicated. It's that the company that
17 actually owned the server, Micfo, had committed a fraud during
18 the exact time period when it was supposed to provide server
19 space to StackPath. The government tosses its credibility
11:54 20 behind StackPath, who just three years ago convicted of fraud,
21 saying that they provided what they promised.

22 MR. KOSTO: Objection.

23 THE COURT: I think you just may have misspoken.

24 MR. NEMTSEV: That's how badly they want to convict
25 Vlad. They're willing to ignore a fraud committed by Micfo

1 that they just prosecuted three years ago. The larger issue
2 is, it's unclear what Micfo promised. As you saw from the
3 invoices, the very first time that Micfo promised to host that
4 IP address in Boston for a 30-day period was between
5 December 1, 2018, and December 30, 2018. The IP address was
6 supposed to be hosted on server 7, but as you saw from the
7 other invoices, server 7 was occupied by a different IP address
8 since September and November of 2018.

9 There's no evidence that the IP that we care about was
10 hosted in Boston during this pivotal October to early November
11 period. There's no evidence that Micfo would provide its
12 services for free, and there's no evidence that they put those
13 IPs on that server. And this is not a technicality. This is a
14 major constitutional problem. It undermines everything that
15 the government promised to prove in their indictment and
16 undermines the entire premise of arresting Vlad in Switzerland
17 and forcing him to stand trial in Massachusetts, a place that
18 he's never visited, a place where he could never in a million
19 years imagine being placed on trial.

11:57 20 It's this constitutional protection that protects you
21 and me from being placed on trial in Alaska for conduct that we
22 committed elsewhere. By putting Vlad on trial here, the
23 government has undermined our future rights that the founders
24 of this country guaranteed us. This is the United States. We
25 treat everyone equal. All the rights that are conferred on you

1 and me are also conferred on Vlad as well. Our legal system is
2 the model for democracies around the world. Vlad is entitled
3 to the same right as somebody born on Beacon Hill who went to
4 Harvard. The burden is solely on the government to expunge his
5 presumption of innocence. Without actual direct evidence that
6 Vlad engaged or asked someone to engage in hacking of the two
7 filing agents, and that he knew the stock tips that he had were
8 based on those hacks, there's no crime.

9 The key, as Judge Saris will tell you, is in knowing
11:58 10 an intentional violation of the law. You can't violate the law
11 by accident. You can't violate the law when you have a
12 good-faith belief that your team is trading based on information
13 produced by Preston. This isn't a movie or a game. This isn't
14 Rocky 4.

15 You're about to deliberate over the fate and freedom
16 of a man that is only presumed innocent, but based on the
17 evidence you received, actually innocent of this gravely
18 serious charge.

19 There's a repeated saying in the lawbooks that "Better
11:59 20 ten guilty go free than one innocent be convicted." That's why
21 our founding fathers, when they established our legal system,
22 they fought so bravely to put the burden squarely on the
23 government and made the burden very high. But even a juror,
24 especially if a juror suspects a defendant may have done the
25 crime, they said it's possible that the defendant did the

1 crime, thinks it's probable, that's not nearly enough to
2 convict. They must convince you, each of you, unanimously that
3 there's no reasonable explanation of the evidence, no
4 reasonable doubt of guilt, by credible, convincing, even
5 unimpeachable evidence, a very high standard that has preserved
6 all our freedom since the brave citizens of Boston fought just
7 outside the back door of our courthouse 250 years ago.

8 His fate, his freedom, his future are in your hands.

9 He's not seeking sympathy. He sat here facing false

10:00 10 accusations. I'm asking you to lift the cloud, the burden of
11 this painful and false accusation that has weighed on him and
12 his family for 22 months. He's a good man, a man you may not
13 have heard of do anything wrong. So I ask you to deliberate,
14 discuss, weigh the evidence against this high standard, and
15 tell Mr. Klyushin and the world that when the government does
16 not prove what it promises, does not prove each element of the
17 crime charged, that the only verdict that is appropriate is
18 "not guilty." Thank you for your time.

19 THE COURT: Thank you. You want to stand and stretch
12:00 20 for a few minutes, and we'll have the rebuttal.

21 (Pause.)

22 THE COURT: This should be about a half an hour. Is
23 anyone desperate right now? Okay, and then we'll break. All
24 right, thank you. Let's be seated.
25

1 REBUTTAL ARGUMENT BY MR. FRANK:

2 MR. FRANK: Good afternoon, ladies and gentlemen. I
3 am acutely aware that I am the third lawyer to speak to you
4 over the last several hours, and I am the only lawyer that came
5 between you and lunch, which is a place no lawyer wants to be,
6 but I'll be brief, and then you can go on your way.

7 I want to start with what's not in dispute based on
8 what Mr. Nemtsev just told you. What's not in dispute is that
9 there was a hack on DFIN and Toppan Merrill. What's not in
10:02 10 dispute is that the hackers were sophisticated; they were
11 experts. What's not in dispute is that the hackers stole
12 confidential earnings information of dozens of companies right
13 before those companies announced those earnings to the SEC and
14 to the world. What's not in dispute is that this defendant
15 runs a company that simulates hacking, this kind of hacking,
16 for its clients; that he has hacking experts who work for him.
17 What's not in dispute is that the defendant and his associates
18 traded in the exact same stocks that were hacked at the exact
19 same time of the hack, right before those earnings announcements
12:02 20 were actually announced.

21 What's not in dispute is that this defendant, despite
22 never having a brokerage account before these hacks, somehow
23 over the next two years made a stunning amount of money from
24 trading around earnings announcements, tens of millions of
25 dollars. So did Sladkov, so did Irzak, so did Rumiantcev; so

1 did the defendant's investors, who gave him a 60 percent cut, a
2 60 percent cut to a man who didn't even have a brokerage
3 account before 2018.

4 And what's not in dispute, members of the jury, is
5 that after the hack ended in August of 2020, his earnings
6 trading fell off a cliff, and he started losing money on
7 earnings trades. Even their own expert, Mr. Tawil, their
8 expert, didn't dispute that.

9 For a man who made that much money in that short a
10 period of time, I submit to you, he must be the unluckiest man
11 in the world. He's the unluckiest man in the world to start
12 his trading career right around the time of a major hack at
13 DFIN and TM. He's the unluckiest man in the world to have
14 96 percent of his earnings trade in the shares of the companies
15 whose earnings announcements were hacked at DFIN and Toppan
16 Merrill. He's the unluckiest man in the world that his trading
17 invariably happens after the hacks and before the news is
18 announced. He's so unlucky that the hacks can be traced back
19 through VPNs and Bitcoin transactions to the IP address of his
12:04 20 company that specializes in imitating hackers; on one occasion,
21 right back to his best friend, the guy he regularly goes to the
22 sauna with, Ivan Ermakov, within four minutes of one of those
23 hacks. Of all the billions of IP addresses in the world and
24 the dozens of VPNs, somehow they come back to him and his wife.

25 He's so unlucky that on the computer of one of his

1 fellow traders, Igor Sladkov, a man who trades in lockstep with
2 him and has his company's super-encrypted chat apps on his
3 phone -- you didn't hear that from the defense, but the M-13
4 chat app on Igor Sladkov's phone, the man who trades in
5 lockstep with him, that man has the stolen MNPI, the stolen
6 earnings information actually on his computer screen. The FBI
7 found it, and we showed it to you.

8 He's so unlucky, this man, that he actually has a
9 newspaper article saved in his iCloud account of an article in
10 a protected sleeve, a year after it was published, about a
11 hacker who trades on stolen earnings information to make
12 millions of dollars. Lo and behold.

13 He's so unlucky that his remarkable beginner's luck at
14 trading runs out at precisely the time that the hackers get
15 locked out of DFIN and Toppan Merrill.

16 Oh, I almost forgot. He also happens to be involved
17 in a Threema chat where they're talking about avoiding the SEC
18 and ending up as a defendant in a courtroom. What are the odds
19 of that?

12:06 20 What do you do when your luck is that bad? You do
21 what you see. You throw everything up against the wall to see
22 if something sticks: The FBI and the SEC jumped to
23 conclusions. They targeted him because he's Russian. The
24 witnesses, you heard every one of them asked, the witnesses
25 were rehearsed. It wasn't Klyushin because he didn't trade in

1 the shares of each and every stock whose earnings were
2 downloaded, just some of the stocks, just 356 of them. It
3 wasn't Klyushin because he had a magical app, Preston, that
4 told him what to buy. That's why he was so successful. It
5 wasn't his buddy Ermakov, but if it was his buddy Ermakov, he
6 didn't know about it. No one told him.

7 If it was anybody, it was Sladkov, and he doesn't know
8 Sladkov, and he has nothing to do with him, and never mind the
9 M-13 chat app on his phone and all the other evidence of
10 connections to the defendant on his phone. But, really, it was
11 the victims' fault because they didn't have multifactor
12 authentication and they had poor password hygiene. You heard
13 that as well.

14 And whatever happened, whatever happened, it
15 definitely didn't happen in Boston. Micfo is the real fraud.
16 It's Aditi Shah. She's behind the scheme. She's the real
17 fraudster.

18 And a personal favorite, that chat about ending up as
19 a defendant in a courtroom? That's about investor privacy.
12:08 20 Let's quickly take a look at a few of those.

21 Preston, the social media software that the defendant
22 wants you to believe was the fuel for his investment success,
23 the magical app that he supposedly wanted Saxo to try, the app
24 that even Nikolai Rumiantcev said didn't help pick stocks, you
25 saw it in the Threema chat, the one that counsel just showed

1 you. But he didn't read you the part where Rumiantcev says,
2 "It's generally hard to analyze the status of a security based
3 on social media networks." That's line 36-87.

4 And then he goes on to say, "I'm not giving up my
5 hopes that our capability to collect news and posts in social
6 media may help us somehow," smiley face. And in response to
7 that smiley face, the defendant makes a sarcastic response
8 about how "This is the only reason we have this know-how."

9 By the way, that was in July of 2019. That was in
10 July of 2019 that Rumiantcev said, "Social media doesn't help
11 us pick stocks." That was one year after the defendant started
12 trading. And you heard that Saxo Bank had the same reaction a
13 full year later in 2020. When Rumiantcev sent him the access
14 to the app, Saxo wrote back, in so many words, "Nice app, but
15 where's the part about how trading decisions are made?" You
16 have that in evidence too. That's Exhibit 328A. Rumiantcev's
17 answer? "Sorry, trade secret."

18 Counsel asked who creates a cover story about an app?
19 Who does that? Who goes to those lengths? Well, ladies and
12:10 20 gentlemen, you know who does that. You actually saw them
21 discussing this exact cover story in the Threema chat, Ermakov
22 and Rumiantcev discussing how they would tell the trader they
23 wanted to hire, the analyst, that they had an app that analyzes
24 social and mass media; and they would slip in the real data so
25 the analyst wouldn't know that it was real data that he was

1 looking at, that they would mix it up with fake documents so
2 the analyst wouldn't know. They actually discussed the exact
3 cover story.

4 But here's the thing, another question about Preston:
5 If it was so good, why did Preston only work on earnings? Why
6 didn't it analyze social media and come up with stock
7 recommendations that worked on other kinds of trades, the ones
8 where they lost money? If it was so good at analyzing earnings
9 trades, why did it only work on the earnings trades of
10 companies that filed their earnings announcements with DFIN and
11 Toppan Merrill? And if it was so good, why did it break in
12 August of 2020, just stop working right around the time the
13 hackers got locked out? Because it wasn't, because it's a
14 smoke screen, it's a cover story. And whatever it is, whatever
15 it was -- and really there's no evidence about it other than
16 what I've just described to you -- whatever it was, it wasn't
17 the reason the defendant and his associates made \$90 million
18 trading in the shares of companies that filed their earnings
19 via DFIN or Toppan Merrill.

12:11 20 The defendant argues it could have been anybody
21 because there's so many IPs in the world, and that just because
22 Ivan Ermakov was on the 119 IP within four minutes of the hack
23 on DFIN using that same IP address, "We don't know anything.
24 It could have been anybody using those IP addresses. There's
25 so many IPs. There's so many VPNs."

1 Their defense expert, Mr. Roberts, even suggested to
2 you yesterday it could have been somebody else using the M-13
3 IP address. Think about that. Who would that person have
4 been? What, somebody driving by and using the M-13 WiFi?
5 Boloney, ladies and gentlemen. The IPs come back to his
6 company. The Bitcoin tracing does the same.

7 Ivan Ermakov's use of the 119 IP within four minutes
8 of that IP being used to hack DFIN is devastating evidence.
9 And, of course, it's his company that specializes in hacking.
12:12 10 And, of course, it's the defendant who traded in all of those
11 DFIN and Toppan Merrill stocks, not somebody driving by his
12 company and using the company WiFi. And it's the defendant who
13 had the great misfortune of being caught on a Threema chat
14 talking about avoiding the SEC, and ending up as a defendant in
15 a courtroom.

16 He wants you to believe that there's no evidence that
17 Ivan Ermakov had the sophistication and wizardry to pull this
18 off. Seriously? You saw him advertise what his people could
19 do on his own company's website. You saw the brochures. You
12:13 20 saw him proposing to his clients that they could simulate
21 exactly this kind of hack. Their argument is that he didn't
22 put his head of pen testing on it; he only put Ivan Ermakov on
23 this. You know why he put Ivan Ermakov on this; because they
24 were besties. He didn't go to the sauna with the head of pen
25 testing. He went to the sauna with Ivan Ermakov. That's the

1 guy he bought an apartment for. That's the guy who had the car
2 that matches the boss's car with the matching license plates.
3 Of all the employees at M-13, it was Ivan Ermakov who had the
4 matching car and who got the apartment and who got the
5 million-and-a-half-dollar loan from the boss.

6 He argues that there's no evidence that he did the
7 hack personally. Well, first of all, that's not true. He's on
8 the M-13 IP within one hour of it hitting the AirVPN IP that
9 was used in these hacks. But you also know he doesn't have to
12:14 10 be the guy behind the keyboard. Mr. Kosto told you he's
11 charged with conspiracy; he's charged with aiding and abetting.
12 He doesn't have to have done it personally. He ran the hacking
13 company; he was in charge; he's the guy who made the money.

14 And he knew everything about this scheme. Listen to
15 that Saxo call. Look at the way he takes charge in that Saxo
16 call and knows about every trade. Look at the Threema chat
17 where he is filled in each and every step of the way. They
18 actually say on the Threema chat, "Let's just bring him in so
19 we don't have to keep going back to him and telling him what
12:14 20 we're talking about and asking for his permission. Let's just
21 bring him into the chat."

22 One of the sillier arguments you've heard is that
23 because Ivan Ermakov had an iTunes account and used a Mac, it
24 couldn't have been Ivan Ermakov because we know that it was
25 Windows operating systems that were somehow involved in the

1 hack. Well, you know why that is: because he didn't do it
2 directly from his laptop. He went through the virtual servers
3 at DigitalOcean and Vultr, and those virtual servers can host
4 all kinds of different software. They can have multiple
5 different operating systems operating on them at the same time.
6 He says there's no evidence that M-13 was involved in the
7 intrusion. I'm not sure if Mr. Nemtsev was at the same trial
8 that we all were, but I submit to you there was plenty of
9 evidence that came directly back to M-13.

12:16 10 He is the one who called the shots, ladies and
11 gentlemen. He is the one who was the boss of Ivan Ermakov and
12 Nikolai Rumiantcev. He is the one whose company chat app was
13 on Igor Sladkov's phone. He is the one who is so tight with
14 Ermakov. He is the one telling Saxo exactly how this works and
15 how their trading works, and, of course, he's the one who made
16 \$21 million.

17 You also heard the argument that: It wasn't the
18 defendant. It wasn't Ermakov. If it was anyone, it was
19 Sladkov. And Sladkov started trading earlier, and so that's
12:16 20 how you know the defendant wasn't involved.

21 We told you that Sladkov started trading earlier.
22 There's no dispute about that. You don't have to join a
23 conspiracy at the very beginning to be part of a conspiracy.
24 You don't have to join a scheme at the very beginning to be
25 part of a scheme. And PS, there can be more than one hacker

1 involved. It doesn't have to be only Ivan Ermakov. It wasn't
2 only Ivan Ermakov. He was the defendant's close buddy. He was
3 the hacker involved in this scheme. So was Igor Sladkov.
4 That's why he had the confidential earnings information on his
5 computer screen. That's why sometimes he traded first and
6 sometimes the defendant traded first. There was a lot of work
7 involved in this hack, ladies and gentlemen. There was a lot
8 of work. They were hacking each of those networks using Julie
9 Soma's user ID and the other user IDs we talked about again and
12:17 10 again and again. And they had to read all those earnings
11 reports and try and figure out what they were saying and figure
12 out which ones to trade off. They were busy. This was not a
13 one-man job.

14 Now, the Judge will instruct you that in a conspiracy,
15 the defendant doesn't have to know each and every conspirator.
16 He doesn't have to be involved in each aspect of the scheme.
17 He just has to have a general understanding of the scope of the
18 conspiracy. But you know that he actually does know Igor
19 Sladkov. Sladkov had pictures of his yacht on Sladkov's phone,
12:18 20 not just one picture, lots of pictures. Sladkov had
21 pictures -- you heard this from Agent Hitchcock -- of his
22 vacation in the Maldives in Sladkov's phone. Why? Do you have
23 pictures of random other people's vacations that you don't know
24 on your phone?

25 Sladkov has his chat app, his super-secret encrypted

1 chat app that even his own expert couldn't get into, on his
2 phone. Sladkov has a proposal from his company a year before
3 that product was announced on his phone.

4 Sladkov and Ermakov are talking about trading in
5 Kohl's, trading screenshots of what's going on in the market in
6 Kohl's, on the very same day that Sladkov and the defendant are
7 trading in Kohl's, after a download, before the news is public.

8 Sladkov and the defendant and Sladkov's buddy, Irzak,
9 trade in the same direction on the same stock over and over and
10 over and over again, and 97 percent of the time when they're
11 trading the same stocks, they're trading in exactly the same
12 direction. It's Exhibit 255. That alone is devastating
13 evidence of the conspiracy.

14 And, of course, it's the same Julie Soma user ID
15 that's used to get that information over the 104 IP. All those
16 different companies over the 104 IP who had their earnings
17 downloaded, Sladkov and the defendant trade on those companies
18 in the same direction at the same time, after the information
19 is downloaded over an IP that's right here in Boston. 133
20 earnings releases are downloaded over the 104 IP right here in
21 Boston, and Sladkov and the others and the defendant trade on a
22 bunch of those stocks.

23 You'll also learn that whether they knew each other,
24 of course, doesn't matter. It's not necessary to prove that
25 all the conspirators knew each other, and, frankly, you don't

1 even have to find that Sladkov was part of the conspiracy. All
2 you have to find --

3 MR. FERNICH: Objection, objection.

4 MR. FRANK: -- is that he --

5 THE COURT: I'll give you the law. Thank you.

6 MR. FRANK: -- he conspired with one other person.

7 MR. FERNICH: Objection.

8 THE COURT: We'll deal with that later.

9 MR. FRANK: And somebody took a single step in

12:20 10 furtherance of it.

11 There was a challenge to Mr. Clarke's testimony, that
12 he only looked at what we asked him to look at; he only looked
13 at the dates that the government asked him to look at. Well, I
14 submit to you that Mr. Clarke's testimony is essentially
15 unchallenged, that there's a one-in-a-trillion chance that this
16 man would trade the way he did if there was no relationship
17 between his trading and the identity of the filing agent, there
18 is a one-in-a-trillion chance that he would trade long where
19 there were earnings surprises and short there were earnings
12:21 20 surprises on the downside, if there was no relationship between
21 those two things. There's a few-in-a-million chance that he
22 would trade the way he did if there was no relationship between
23 the time of his trade and when there was a download from the
24 DFIN servers. You've heard no serious challenge to any of
25 that.

1 But that brings me to Mr. Tawil. Poor Mr. Tawil.
2 Well, not so poor, Mister 30K. You heard counsel talk about
3 that tweet from Elon Musk and how that could have driven stock
4 prices. Mr. Tawil told you about that, except he didn't know
5 that the tweet was months after the defendant's trading in an
6 earnings announcement. Mr. Tawil, the man who came in here to
7 talk about documents he knew nothing about and didn't bother to
8 check, whose source he didn't even know, who didn't even want
9 to stand by his own expert report. And, of course, the
10 documents he did testify about weren't accurate.

11 Members of the jury, the defense has no obligation to
12 put on a case, none. They can sit here and put us to our
13 burden of proof. But when they do put on a case, you have the
14 right to examine it. Their first witness, Mr. Roberts,
15 confirmed that when hackers behave the way the hackers behaved
16 here, united by common IP addresses and common VPN services and
17 common behavior, that suggests that they are acting as a group.
18 And their second expert witness, Mr. Tawil, showed you how
19 desperate the defendant is to get away from the numbers, from
20 his own trading record, because his trading record is
21 devastating evidence of his fraud, when it started, when it
22 stopped, and the concentration in the earnings announcements of
23 DFIN and Toppan Merrill clients.

24 And that brings me to venue. The defendant wants you
25 to believe that he didn't do it and Ermakov didn't do it, and

1 if anyone did it, it was Sladkov; but whatever you believe, he
2 wants you to think it didn't have anything to do with Boston.
3 This is grasping at straws, members of the jury, trying to
4 confuse because there is no defense to the crime itself.

5 The Judge will instruct you that for the conspiracy
6 count, all we have to prove is that it is more likely than
7 not -- it's a different standard that applies to venue, it is
8 not beyond a reasonable doubt -- all we have to prove is that
9 it is more likely than not that the offense began outside the
10 United States, that the essential conduct of the conspiracy
11 took place outside the United States, and that the defendant
12 was first brought to Boston after he was arrested in
13 Switzerland. That point is not even disputed.

14 There's a stipulation in evidence. He was brought
15 straight to Boston after his arrest in Switzerland. And you
16 know that the agreement began outside the United States in
17 Russia where all the conspirators live. And you know that
18 everything they did to set this conspiracy in motion, they did
19 from Russia. In fact, the crime of conspiracy was complete in
20 Russia.

21 MR. FERNICH: Objection.

22 MR. FRANK: All they had to do was --

23 MR. FERNICH: Objection.

24 THE COURT: Overruled.

25 MR. FRANK: -- was take one overt act after that

1 agreement was made, and the crime of conspiracy was complete.
2 And there were dozens of overt acts. Every single time
3 somebody sat down at a computer to hack into DFIN and Toppan
4 Merrill, that was an overt act. Every single time someone sat
5 down at a computer or picked up their phone to trade on the
6 SaxoTraderGo app, or any one of the other brokerage accounts,
7 that was an overt act in furtherance of the conspiracy. So
8 that is venue for the conspiracy.

9 For the other counts, all you need to find is that
10 it's more likely than not that some essential conduct happened
11 here. That's why we spent so much time talking about the 104
12 IP, the 104 IP that they now claim you have no evidence that it
13 was in Boston. Members of the jury, where were they? You have
14 so much evidence about this one IP address.

15 Mr. Wall they claim was making it up. That's
16 essentially their argument: It wasn't on the StrongVPN
17 website, even though Mr. Wall told you he didn't know how often
18 that website was updated, and, in any event, it didn't matter
19 because those IP addresses were used across the various brands
12:26 20 that StackPath had, including companies like IPVanish.

21 Mr. Wall told you that that IP address was up and
22 running the minute they got it on May 30th of 2018, and Aditi
23 Shah corroborated that. She told you the same thing, and you
24 saw the documents where she notified Cogent, "We want to put
25 this IP address in Boston," and asked Cogent to direct the

1 internet traffic here. And you saw the response from Cogent,
2 "Done," May 30, 2018. And then you saw the invoices from
3 months later, in November and December of 2018, billing
4 StackPath for that IP address in Boston. And you saw the
5 picture of the computer server in Boston as of September, 2018,
6 where that IP address resided. And, yes, there were other IP
7 addresses also on that server because you heard evidence that
8 many IP addresses can reside on a single server.

9 There is abundant evidence, way, way, way more likely
10 than not, I submit to you, that that IP address was in Boston
11 at the relevant time. It is conclusive evidence, and it is
12 from that computer, that IP address, just a few blocks from
13 this courthouse, that 133 earnings reports were downloaded
14 using Julie Soma's user ID from DFIN. That is the deceptive
15 device, using Julie Soma's identity to get into DFIN and get
16 access to those earnings reports. That's the deceptive device
17 for securities fraud. That's the essence of that crime, and it
18 happened from here in Boston. That's the wire for the wire
19 fraud. That's the unauthorized access for the charge of
20 unauthorized access, and it happened as to those 133 earnings
21 announcements from right here in Boston. And you know that the
22 defendant and Sladkov and the others traded in so many of those
23 stocks that were downloaded from right here in Boston in
24 October and November of 2018.

25 That gives you venue over Counts 2, 3, and 4, and it

1 gives you another ground for venue over Count 1. And,
2 remember, this is not beyond a reasonable doubt. This is only
3 more likely than not.

4 I'm going to wrap up, ladies and gentlemen, because I
5 know you're hungry and you've heard a lot of speaking. You
6 walked into this courthouse with your common sense and you will
7 leave it with your common sense, and in between you will take
8 that common sense with you into the jury room for your
9 deliberation, because common sense is all you need to decide
10 this case.

12:29

11 There was a hack. He ran a hacking company. The IP
12 addresses associated with the hack lead back to his hacking
13 company and his close friends. He traded in the shares of the
14 company whose earnings information was stolen. He made a
15 fortune, and he stopped making money when the hackers were
16 locked out. He did it. He did it using an IP right here in
17 Boston just a few blocks from this courthouse. That was part
18 of the scheme, and the evidence is overwhelming, mountains and
19 mountains of evidence. He is guilty beyond a reasonable doubt,
20 exactly as charged. Thank you for your time.

12:30

21 THE COURT: We stand in recess. As soon as you're
22 done with lunch, which I hope is there -- we'll monitor it --
23 we'll come back in, but not a full hour. We're hoping to sort
24 of give counsel the opportunity for lunch as well and then come
25 back here. You know, I'm hoping 1:00 o'clock, give or take.

1 She's going to check out the food. Otherwise, she'll make the
2 sandwiches, right?

3 (Laughter.)

4 (Jury excused.)

5 THE COURT: Can I see counsel at sidebar for one
6 second.

7 SIDEBAR CONFERENCE:

8 THE COURT: Do we need the white noise on? I think we
9 have some press back there.

12:31 10 So let me say, there were two objections Mr. Fernich
11 made which I'm not sure I totally understood, but if it's the
12 issue of whether or not Mr. Sladkov was involved with the
13 conspiracy or not, the sanitized indictment doesn't do much.
14 In other words, the unindicted, unnamed coconspirators were
15 mentioned in the rest of it. So I don't think what -- and
16 maybe I'm wrong but I'm just -- I don't think what Mr. Frank
17 said is wrong. They only need to prove the conspiracy,
18 Klyushin, Ermakov, and Rumiantcev. That's all they need to
19 prove beyond a reasonable doubt is an understanding between
12:32 20 them. So I wasn't sure I understood your objection.

21 MR. FERNICH: They have to prove a single conspiracy
22 charged in the indictment.

23 THE COURT: Right, I hear that, but they're never
24 going --

25 MR. FERNICH: I wouldn't send it back. I don't think

1 it's necessary. I think your Honor would avoid this problem by
2 not sending it back. Your Honor is going to instruct them and
3 summarize --

4 (Cross-talk.)

5 MR. FERNICH: I don't remember what I said. Oh, so
6 your Honor is going to instruct and summarize the indictment,
7 and if they want it, they can ask for it.

8 THE COURT: I think I'm not going to send it in.

9 MR. FERNICH: Yes, I think not.

12:33 10 THE COURT: It's confusing. They don't know what
11 you're talking about.

12 MR. FERNICH: It's a real speaking indictment.
13 There's too much to --

14 THE COURT: Okay. Next one.

15 MR. NEMTSEV: Were there any other objections to the
16 jury instructions?

17 MR. FERNICH: He thinks there's a special preservation
18 requirement here, so for the record, we just reiterate
19 everything that was previously lodged in terms of objections.

12:33 20 THE COURT: I have no idea what you just said.
21 Objections to the -- I heard no objections --

22 MR. FERNICH: No, just everything -- formally, to the
23 extent that we have to, we just formally, without elaborating,
24 renew every charge objection.

25 THE COURT: Can I say, you can't do that.

1 MR. FERNICH: I can't? Okay. No, we don't have to do
2 that.

3 THE COURT: Let me put it this way: When I'm done
4 with the charge, at that point you preserve.

5 MR. FERNICH: All right.

6 THE COURT: Okay? There was another objection, but I
7 do think Mr. Frank was right that the overt -- that the
8 conspiracy was complete, or could have been complete, if there
9 was an agreement and an overt act in Russia.

12:34 10 MR. FERNICH: If there was an overt act, yeah, and
11 then he added that afterward.

12 THE COURT: I just wanted to make sure -- you know, we
13 had a long day -- that I'm understanding it. Enjoy, have a
14 wonderful lunch, and then I'll bore everyone to tears and just
15 read this instruction, and then you will preserve. All right.

16 In the meantime, let me just ask, are the two
17 paralegals going to be assisting to make sure that the
18 documents are all in good shape to go back?

19 MR. KOSTO: Yes.

12:34 20 THE COURT: Okay. I plan on leaving here around 4:00
21 today. They may have to leave a little on the early side, but
22 it's my practice to send them home. In other words, I'll see
23 them when they go home. And I'm sort of going to assume that
24 if you're all here, the defendant should be here. If you don't
25 all want to be here, none of you should be here to say good

1 night.

2 MR. FRANK: Okay. We'll be here. What's your
3 pleasure, your Honor?

4 MR. FERNICH: This is home for them.

5 THE COURT: My point is only, I say "good-bye." I
6 don't just dismiss them out of the courtroom. I say "good-bye"
7 and remind them not to talk about the case or look at social
8 media, dah-dah-dah. So do you all want to be here? Think
9 about it.

12:35 10 THE CLERK: If there's a question, Judge, don't forget
11 I need numbers --

12 THE COURT: My charge that is going to put everyone to
13 sleep is coming next.

14 MR. FERNICH: What time do you want to start here?

15 THE COURT: I'm going to say 1:00. It's my practice
16 to send back a transcript of the charge as soon as it's
17 available, so Monday morning some time, and I'll ask you to
18 proof it to make sure.

19 (End of sidebar conference.)

01:11 20 (A recess was taken, 12:36 p.m.)

21 (Resumed, 1:11 p.m.)

22 (Jury enters the courtroom.)

23 THE COURT: The jury shall remain standing. Everybody
24 else in the courtroom shall be seated. Thank you.

25

1 JURY INSTRUCTIONS

2 THE COURT: Good afternoon. There's an old tradition
3 in the courts of our Commonwealth and in this Federal Court
4 that at this stage of the proceeding, the judge stands and
5 faces the jury and the jury faces the Judge. This is the best
6 way that I know how to symbolize the important role we both
7 play at this trial.

8 My job has been threefold: First, my job was to
9 impanel a fair and impartial jury. You are that fair and
01:12 10 impartial jury. You swore to be fair and impartial, and you've
11 been amazing at showing up on time and paying attention. On
12 behalf of everyone in this room, we thank you for your service.

13 The second job was to rule on evidentiary objections
14 and make certain rulings of law, and now my third and final
15 task is to give you these instructions of law. You must follow
16 these instructions whether you agree with them or not. To the
17 extent I say something differently from what the attorneys say,
18 you shall follow these instructions of law.

19 These instructions will be divided into three parts.
01:12 20 The first part is very general but extremely important. It
21 will set forth the constitutional principles that govern this
22 case, and I remind you that all of you swore that you could
23 follow these constitutional principles. In addition, it will
24 go through what are Rules of Evidence and what are the
25 differences between openings and closings and that sort of

1 thing.

2 The middle portion of the charge is very specific to
3 the specific crimes with which Mr. Klyushin has been charged,
4 and I gave you a verdict form. I will be going through the
5 elements that must be proven beyond a reasonable doubt.

6 And my third and final task will be what I call the
7 "mechanics" of getting this case out to you to deliberate,
8 about choosing a foreperson, about the role of alternates,
9 about deliberations.

01:13 10 Now, at this point I am going to encourage you to at
11 least take some barebones notes about this charge. Please
12 don't take it all down. It's impossible. It's very long and
13 really boring, but it's important, okay, for you to follow.
14 It's not as exciting as what you heard this morning, but it's
15 important for you to follow the law.

16 In order to make sure you get it correctly, I have an
17 old-fashioned tape recorder playing right here, which I will
18 bring back into the jury room, and on Monday you'll have a
19 transcript of the full charge. But the only reason I ask you
01:14 20 to take notes is so you can remember exactly where in the
21 charge I may have discussed a particular issue. But don't try
22 and transcribe everything that I say. You'll get it, both on
23 the tape recording and in the transcript.

24 All right, so let's sit down and get going.

25 Let me begin with the role of the Court. These

1 instructions are about the law you must apply. I don't mean
2 any of my instructions to be understood by you as a comment by
3 me on the facts or on the evidence in the case. You are the
4 judges of the facts and the sole judges of the credibility of
5 the witnesses. You must be guided only by my instructions on
6 the law as I state them. You should consider them as a whole.
7 I may repeat some portions, but that does not mean that they
8 are more important. All the instructions are equally
9 important.

01:15 10 Even if you disagree with some of the rules of law or
11 don't understand the reasons for them, you are bound to follow
12 them as jurors in this case. This is a fundamental part of our
13 system of government by law rather than by the individual views
14 of the judge and jurors who have responsibility for deciding a
15 specific case.

16 To the extent I say something differently from what
17 the attorneys said, follow my instructions of law. However, I
18 am not the judge of the facts. I have no opinion as to the
19 appropriate outcome of the case. You must disregard any facial
01:16 20 expressions you think I might have had. Also, if during the
21 course of these instructions, or at any other time, I have
22 stated the evidence differently than you remember it, you must
23 disregard my memory of the evidence. It is your memory that
24 counts.

25 What is your job as the jury? Your function as jurors

1 is to determine the facts. You are the sole and exclusive
2 judges of the facts. You decide the weight, effect, and value
3 of the evidence. You also decide the credibility or
4 believability of the witnesses. Once you determine the facts,
5 it is your duty to apply those facts to the law as I explain
6 it. You must decide whether the defendant is guilty or not
7 guilty of the charges that the United States has brought
8 against him.

9 You must determine the facts without prejudice, fear,
01:17 10 favor, bias, or sympathy. You also may not consider any
11 personal feelings you may have about the race, religion,
12 national origin, sex, or age of the defendant, or any witness
13 who testified during trial. You must determine the facts
14 solely from a fair consideration of the evidence. If you were
15 to allow prejudice, fear, favor, bias, or sympathy to enter
16 into your deliberations, there's a great risk that you will not
17 arrive at a true and just verdict.

18 The issue before you is not whether you are for or
19 against the crime charged. Rather, the issue is whether the
01:17 20 government has proven beyond a reasonable doubt that the
21 defendant is guilty of the crime charged.

22 You should also not be influenced by the fact that the
23 United States of America has brought this case. All parties,
24 the government and Mr. Klyushin, stand as equals before the
25 Court. So when you go back to the jury room, the question must

1 never be, will the government win or lose this case? You
2 represent the people of the United States, and the people of
3 this country always win when justice is done.

4 You are not to decide the case based on what you may
5 have heard or read outside the courtroom. You cannot speculate
6 or guess as to what might or might not have happened. You
7 cannot allow yourselves to be influenced by your view of the
8 nature of the crimes with which the defendant has been charged
9 or the consequences of the verdict. Instead, you must confine
01:18 10 your deliberations to the evidence and nothing but the
11 evidence.

12 The lawyers were allowed to comment during the trial
13 both on the evidence and the rules of law, but if what they say
14 about the evidence differs from your memory, let your
15 collective memory control. And if what they have said about
16 the law seems to you to have a different meaning in any way
17 from my instructions on the law, be guided by these instructions.

18 What is evidence? We discussed this briefly way back,
19 but we're going to go through it now. The evidence from which
01:19 20 you are to decide what the facts are consists of sworn
21 testimony of witnesses, both on direct and cross-examination,
22 regardless of who called the witness, and the exhibits that
23 have been received in evidence.

24 You are not limited solely to what you see and hear as
25 the witnesses testify. You are permitted to draw from facts

1 you have found to have been proven such reasonable inferences
2 you believe are justified in light of common sense and personal
3 experience.

4 The mere number of witnesses, the length of the
5 testimony, or the number of exhibits have no bearing on what
6 weight you give to the evidence or whether you find the
7 government's burden of proof has been met. Weight does not
8 mean the amount of the evidence. Weight means your judgment
9 about the credibility and importance of the evidence.

01:20 10 Certain things are not evidence. Opening statements
11 that you heard, the closing arguments you heard today made by
12 the lawyers are not evidence in the case, nor are the questions
13 of counsel evidence. Only the witness's answers are evidence.
14 Questions that were not answered or to which objections were
15 sustained also are not evidence in the case. The function of
16 the lawyers in making their arguments is to point out those
17 things that are most significant or most helpful to their side
18 of the case, and, in so doing, to call your attention to
19 certain facts or inferences that might otherwise escape your
01:21 20 notice. In the final analysis, however, it is your own
21 recollection and interpretation of the evidence that controls
22 in the case.

23 At times during the trial -- at many times during the
24 trial, you heard the lawyers make objections to questions asked
25 by the other lawyers or to the answers by the witnesses. This

1 simply meant that the lawyers were requesting that I make a
2 decision on a rule of law. Don't draw any conclusion from such
3 objections or my rulings on them. These rulings only relate to
4 the legal questions that I had to determine and should not
5 influence your thinking. When I -- you know this by now, but
6 when I sustained an objection to a question, the lawyer (Sic)
7 was not allowed to answer it, and don't try to guess what might
8 have been the answer had I allowed the question to be answered.
9 Similarly, when I told you not to consider a particular
01:21 10 statement -- maybe someone flipped it in before I could rule --
11 because I struck it, you were told to put that statement out of
12 your mind, and you may not refer to that statement in your
13 deliberations.

14 Also, if I received evidence but told you it was
15 received for a limited purpose -- remember several times I
16 interjected and I said, you know, "I'm limiting what you can do
17 with this" -- or if I tell you now that you can only use some
18 of the evidence in a particular way, consider those
19 instructions, and you are bound by that limitation.

01:22 20 During the trial I occasionally may have made comments
21 to the lawyers, asked questions of a witness, or admonished a
22 witness concerning the manner in which he should respond to
23 questions or counsel. Do not assume from anything I may have
24 said that I have an opinion concerning any of the issues in
25 this case. Except for my instructions to you on the law, you

1 should disregard anything I have said during the trial in
2 arriving at your own findings of the facts.

3 I want to go through again what the difference is
4 between direct and circumstantial evidence. There are two
5 types of evidence which you may use to determine the facts of
6 the case: There's direct evidence and circumstantial evidence.
7 Direct evidence is direct proof of a fact, such as the
8 testimony of an eyewitness that the witness saw something.
9 Circumstantial evidence is indirect evidence; that is, it is
01:23 10 proof of a fact or facts from which you could draw the
11 inference, by reason and common sense, that another fact
12 exists, even though it has not been proven directly. Any
13 inferences or conclusions that you draw must be reasonable and
14 natural, based on your common sense and experience of life. In
15 a chain of circumstantial evidence, it is not required that
16 each one of your inferences and conclusions be inevitable, but
17 it is required that each one of them be reasonable.

18 Direct and circumstantial evidence have equal standing
19 in the law. That is, with respect to what weight shall be
01:23 20 given to the evidence before you, the law makes no distinction
21 between direct and circumstantial evidence. Also, no greater
22 degree of certainty is required of circumstantial evidence than
23 that of direct evidence. In reaching your verdict, it is
24 permissible to draw and rely upon inferences from the evidence.
25 You are to consider all the evidence in this case and give each

1 item of evidence the weight you believe it deserves.

2 Whether the evidence is direct or circumstantial, the
3 government must prove the defendant's guilt beyond a reasonable
4 doubt from all the evidence in the case.

5 I would like to now address the issue of credibility
6 of witnesses. As jurors, your function is to evaluate the
7 exhibits that have been introduced and determine the
8 credibility of the witnesses' testimony. "Credibility" is
9 simply another word for believability. It is your function to
01:24 10 determine the believability of the witnesses who testified.
11 You're free to decide that you believe all of what a witness
12 told you, none of what a witness told you, or some of what a
13 witness told you. You are free to do so in accordance with
14 your collective judgment as to the believability of what it was
15 that the witness told you while testifying.

16 Neither I nor anyone else can tell you all of the ways
17 that you go about making this important judgment about
18 credibility. That's why we have you, the jury. However, I can
19 suggest to you some of the things that you should consider in
01:25 20 making that judgment as to credibility. You should consider
21 the conduct and demeanor of the witness while testifying; how
22 the way the witness testified on direct compared to how he
23 testified on cross; the frankness or lack of frankness that the
24 witness showed while testifying; the reasonableness or
25 unreasonableness of the witness's testimony; the probability or

1 improbability of that testimony; the opportunity or lack of
2 opportunity that the witness had to see and know the facts
3 about which he or she was testifying; the accuracy of the
4 witness's recollection; the degree of intelligence shown by the
5 witness; the witness's prior conduct for truthfulness; and
6 whether the witness has attempted to fill in gaps in his memory
7 of events with information he or she obtained after the event.

8 You may also consider whether the witness has a motive
9 for testifying and the interest or lack of interest that the
01:26 10 witness may have in the outcome of the case. You may take into
11 consideration the character and the appearance of the witness
12 at trial and any bias he or she has shown in his testimony.
13 This list is not exhaustive but rather a list of examples of
14 the factors you may take into account, and should take into
15 account, in making a credibility judgment.

16 You may consider inconsistencies in the evidence or
17 differences as you weigh evidence, but you do not have to
18 discredit testimony solely because there are inconsistencies or
19 differences in the testimony of a witness or between the
01:26 20 testimony of different witnesses. Two or more persons
21 witnessing an incident or a transaction may see or hear it
22 differently. In weighing the effect of any inconsistency or
23 difference, you may consider whether it concerns a matter of
24 importance or an unimportant detail and whether it results from
25 innocent error or intentional falsehood.

1 You are not required to accept testimony, even if it
2 is uncontradicted. You may decide, because of the witness's
3 bearing and demeanor, or because of inherent improbability, or
4 other reasons sufficient to you, the testimony is not worthy of
5 belief.

6 Let me talk to you for a minute about law enforcement
7 agents. You have heard the testimony of law enforcement
8 officials. The fact that a witness may be employed by the
9 federal government as a law enforcement official does not mean
01:27 10 that his or her testimony is necessarily deserving of more or
11 less consideration or greater or lesser weight than that of an
12 ordinary witness. It is your decision, after reviewing all the
13 evidence, whether to accept the testimony of the law enforcement
14 witness and to give that testimony whatever weight, if any, you
15 find it deserves.

16 It is also appropriate to consider whether, in his or
17 her investigation, the particular law enforcement witness acted
18 in accordance with the standards of the department or agency.
19 If you find any omissions in the investigation were significant
01:28 20 and not adequately explained, you may consider whether the
21 omissions tend to affect the quality, reliability, or
22 credibility of the evidence presented by the government.

23 Now, I just finished what I'll call the very broad
24 evidentiary instructions. Let's stand up and stretch because
25 I'm about to hit the very important area of the constitutional

1 principles here.

2 (Pause.)

3 THE COURT: All right, let's hit the Constitution.
4 Let's go, the constitutional principles. Let's begin with the
5 presumption of innocence. It is a cardinal principle of our
6 system of justice that every person accused of a crime is
7 presumed to be innocent unless and until his guilt is
8 established beyond a reasonable doubt. This presumption is not
9 a mere formality. It is a matter of the most important
01:29 10 substance.

11 The presumption of innocence alone may be sufficient
12 to raise a reasonable doubt and to require the acquittal of the
13 defendant. The defendant before you has the benefit of that
14 presumption throughout the trial, and you are not to convict
15 him of a particular charge unless you are persuaded of his
16 guilt of that charge beyond a reasonable doubt.

17 The presumption of innocence until proven guilty means
18 that the burden of proof is always on the government to satisfy
19 for you that the defendant is guilty of the crimes with which
01:30 20 he is charged beyond a reasonable doubt. It is a heavy burden,
21 but the law does not require that the government prove guilt
22 beyond all possible doubt. Proof beyond a reasonable doubt is
23 sufficient to convict.

24 This burden never shifts to the defendant. It is
25 always the government's burden to prove each of the elements of

1 the crimes charged beyond a reasonable doubt by the evidence
2 and the reasonable inferences to be drawn from the evidence.
3 The defendant has the right to rely upon the failure or
4 inability of the government to establish beyond a reasonable
5 doubt any essential element of a crime charged against him.

6 If, after fair and impartial consideration of all the
7 evidence, you have a reasonable doubt as to the defendant's
8 guilt of the crime charged, it is your duty to find him not
9 guilty of that crime.

01:30 10 On the other hand, if, after fair and impartial
11 consideration of all the evidence, you are satisfied beyond a
12 reasonable doubt of the defendant's guilt of the crime charged,
13 you should vote to convict him.

14 What is the burden of proof? The United States has
15 the burden of proving beyond a reasonable doubt that the
16 defendant is guilty of the crime charged by the indictment.
17 This burden of proof rests on the United States and never
18 shifts to the defendant. The defendant is not required to
19 prove anything to you or to present any evidence. Because of
01:31 20 the constitutional right to the presumption of innocence, the
21 government has the burden of proof beyond a reasonable doubt on
22 every essential element of the crime charged.

23 What is proof beyond a reasonable doubt? What is
24 proof beyond a reasonable doubt? Reasonable doubt is a doubt
25 based on reason and common sense. The law does not require

1 that the government prove guilt beyond all possible doubt --
2 little in life can be proven to an absolute certainty -- but
3 the law does require that the government prove each of the
4 elements of the crime charged beyond a reasonable doubt.

5 It is not sufficient for the government to establish a
6 probability, though a strong one, that an element of a crime
7 charged is more likely to be true than not true. That is not
8 enough to meet the government's heavy burden of proof beyond
9 reasonable doubt. A reasonable doubt may arise not only from
01:32 10 the evidence produced, but also from a lack of evidence. Of
11 course, a defendant never is to be convicted based on suspicion
12 or conjecture.

13 If after a fair and impartial consideration of all of
14 the evidence you have a reasonable doubt, it is your duty to
15 acquit. On the other hand, if after fair and impartial
16 consideration of all the evidence you are satisfied that the
17 government has proven each of the elements in the indictment
18 beyond a reasonable doubt, you should vote to convict.

19 It is not necessary for you to conclude that the
01:33 20 defendant is factually innocent in order to return a "not
21 guilty" verdict. A "not guilty" verdict means only that the
22 prosecution has not met its burden of proving the defendant
23 guilty beyond a reasonable doubt.

24 Mr. Klyushin has not testified in this trial. It is
25 the law of the United States that a defendant has an absolute

1 right not to testify. The defendant is under no obligation or
2 need to do so. There are many reasons for not testifying,
3 reasons that are quite consistent with innocence. Therefore,
4 you are not to speculate or engage in conjecture as to those
5 reasons, and, as I have said, you are to draw no adverse
6 inference whatsoever from the defendant not testifying. If you
7 were to do so, you would be doing our nation and our body of
8 law a disservice and an injustice. Moreover, you would be
9 violating your solemn oath as jurors. Once again, it is the
01:34 10 burden of the United States to prove all elements of the
11 charges beyond a reasonable doubt. The defendant has no burden
12 whatsoever.

13 Let me speak to you briefly about the question of
14 punishment. The question of possible punishment of a defendant
15 is of no concern to you, the jury, and should not in any sense
16 enter into or influence your deliberations. The duty of
17 imposing the sentence rests exclusively upon the Court. Your
18 function is to weigh the evidence in this case and to determine
19 whether or not the defendant is guilty beyond a reasonable
01:34 20 doubt solely upon the basis of such evidence. Under your oaths
21 as jurors, you cannot allow a consideration of the punishment
22 which may be imposed upon the defendant, if he is convicted, to
23 influence your verdict in any way or enter into your
24 deliberations in any sense.

25 All right, now I'm going to go into the specific

1 instructions. Remember I told you there was a middle portion?
2 And I'm going to go into the specific crimes that are alleged/
3 charged in the indictment.

4 You've heard the term "indictment." I remind you that
5 an indictment is not evidence of any kind against the
6 defendant, Vladislav Klyushin. It's just an accusation in a
7 document filed with the court to bring a criminal charge
8 against a defendant.

9 The number of charges against Mr. Klyushin is not
01:35 10 evidence of guilt and should not influence your decision in
11 this case in any way. It is your duty to separately consider
12 the evidence that relates to each charge and to return a
13 separate verdict for each one. For each charge, you must
14 decide whether the government has presented proof beyond a
15 reasonable doubt that Mr. Klyushin is guilty of that particular
16 charge. You must consider them separately. Your decision on
17 one charge should not influence your decision on the other
18 charge.

19 For each count, the government must prove several
01:36 20 things, and those things that the government has to prove we've
21 been referring to as "elements." You've heard that. The
22 government must prove the elements of each crime beyond a
23 reasonable doubt. You must give separate consideration to each
24 of the counts and to the elements in each count.

25 Also, you've heard evidence that certain acts occurred

1 on or about certain dates. It does not matter if the
2 indictment charges that a specific act occurred on or about a
3 certain date and the evidence indicates that, in fact, it was
4 on another date. The law only requires a substantial
5 similarity between the dates alleged in the indictment and the
6 dates alleged by the testimony or exhibits.

7 All right, so I'm going to go through -- you have the
8 verdict in front of you -- the different counts. In Count One,
9 the government contends that Mr. Klyushin committed the crime
01:37 10 of conspiracy to obtain unauthorized access to computers or to
11 commit wire fraud or to commit securities fraud.

12 In Count Two, the government alleges that Mr. Klyushin
13 committed wire fraud and aiding and abetting.

14 In Count Three, the government alleges that
15 Mr. Klyushin committed the crime of unauthorized access to
16 computers and aiding and abetting.

17 In Count Four, the government alleges that
18 Mr. Klyushin committed the crime of securities fraud and aiding
19 and abetting.

01:37 20 Mr. Klyushin has pled not guilty to these charges, and
21 the government must therefore prove them all by proof beyond a
22 reasonable doubt with respect to all of the elements of a given
23 offense charged in the indictment against Mr. Klyushin before
24 you can find Mr. Klyushin guilty of that particular offense.

25 You've heard the term "venue," and I'll be getting

1 into that in much greater detail. The government must also
2 prove by a preponderance of the evidence that venue is proper
3 in order for you to convict.

4 So I'm going to Count One, conspiracy.

5 What's a conspiracy? Count One charges Vladislav
6 Klyushin with conspiring with Ivan Ermakov, Nikolai Rumiantcev,
7 and others to commit federal crimes; specifically, the crimes
8 of unauthorized access to computers with the intent to defraud,
9 wire fraud, or securities fraud. It is against federal law to
01:39 10 conspire with someone to commit these crimes.

11 The government does not have to prove that the
12 defendant agreed to commit all three of these crimes in order
13 for you to find him guilty of the conspiracy charge. The
14 government must, however, prove that the defendant agreed to
15 commit at least one of these three crimes, and you must
16 unanimously agree on which one. You cannot find the defendant
17 guilty of conspiracy unless you unanimously agree that the same
18 federal crime or crimes was the object of a conspiracy. So, in
19 other words, you must all unanimously agree as to what crime or
01:39 20 crimes were committed. It can't be six agreeing to one and six
21 as to another. You have to be unanimous.

22 For you to find the defendant guilty of conspiracy,
23 you must be convinced that the government has proven each of
24 the following things beyond a reasonable doubt:

25 First, that the agreement specified in the indictment,

1 and not some other agreement or agreements, existed between at
2 least two people to commit unauthorized access to computers
3 with the intent to defraud, wire fraud, or securities fraud.
4 I'll repeat that.

5 First, that the agreement specified in the indictment,
6 and not some other agreement or agreements, existed between at
7 least two people to commit unauthorized access to computers
8 with the intent to defraud, wire fraud, or securities fraud.

9 Second, that the defendant willfully joined in that
01:40 10 agreement. Second, that the defendant willfully joined in that
11 agreement.

12 And, third, that one of the conspirators committed an
13 overt act in an effort to further the purpose of the
14 conspiracy.

15 A conspiracy is an agreement, spoken or unspoken. The
16 conspiracy does not have to be a formal agreement or plan in
17 which everyone involved sat down together and worked out all of
18 the details. It is not necessary to show that the participants
19 directly, by spoken or written word, stated among themselves
01:41 20 exactly what their object or purpose was, or exactly what the
21 details of the scheme were, or exactly what means they would
22 adopt to achieve their goals. A conspiracy is, by its very
23 nature, usually secret in its origin and in its execution.
24 Because of the secretive nature of the crime of conspiracy, the
25 agreement between two or more people may be express or tacit.

1 It is sufficient if the government demonstrates conduct
2 evidencing a silent understanding to share a purpose to violate
3 the law.

4 Because a conspiracy by its very nature is often
5 secret, neither the existence of the agreement nor the fact of
6 the defendant's participation in it must be proved by direct
7 evidence but may be proved by circumstantial evidence.

8 Mere similarity of conduct among various people or the
9 fact that they may have associated with each other or discussed
01:42 10 common aims and interests does not necessarily establish proof
11 of the existence of a conspiracy, but you may consider such
12 factors.

13 To act willfully means to act voluntarily and
14 intelligently and with the specific intent that the underlying
15 crimes of unauthorized access to computers, wire fraud, or
16 securities fraud be committed. And I'll be instructing you on
17 those later, but you have to have the specific intent that the
18 underlying crimes of unauthorized access to computers, wire
19 fraud, or securities fraud be committed. That is to say, the
01:42 20 government must prove that the defendant acted with bad
21 purpose, either to disobey or disregard the law, not to act by
22 ignorance, accident, or mistake.

23 The government must prove two types of intent beyond a
24 reasonable doubt before the defendant can be said to have
25 willfully joined the conspiracy: an intent to agree and an

1 intent that the underlying crimes be committed. Mere presence
2 at the scene of a crime, even when combined with knowledge that
3 the crime will be committed, is not alone enough, but you may
4 consider it among other factors.

5 Intent may be inferred from the surrounding
6 circumstances. Proof that the defendant willfully joined in
7 the agreement must be based upon evidence of his own words
8 and/or actions. You need not find that the defendant agreed
9 specifically to or knew about all the details of the crime, or
01:43 10 knew every other coconspirator, or that he participated in each
11 act of the agreement, or played a major role, but the
12 government must prove beyond a reasonable doubt that he knew
13 the essential features and general aims of the venture.

14 Even if the defendant was not part of the agreement at
15 the very start, he can be found guilty of a conspiracy if the
16 government proves that he willfully joined the agreement later.
17 On the other hand, a person who has no knowledge of the
18 conspiracy, but simply happens to act in a way that furthers
19 some object or purpose of the conspiracy, does not thereby
01:44 20 become a conspirator.

21 The third element that the government must prove is
22 that one of the conspirators committed an overt act to further
23 the purpose of the conspiracy. An overt act is any act
24 knowingly committed by one or more of the conspirators in an
25 effort to accomplish some purpose of the conspiracy. Only one

1 overt act has to be proven. The government is not required to
2 prove that the defendant personally committed or knew about the
3 overt act. It is sufficient if one conspirator committed one
4 overt act at some time during the period of the conspiracy.
5 The overt act need not be illegal.

6 The government does not have to prove that the
7 conspiracy succeeded or was achieved. The crime of conspiracy
8 is complete upon the agreement to commit the underlying crime
9 and the commission of one overt act.

01:45 10 Whether there existed a single unlawful agreement or
11 many such agreements, or indeed no agreement at all, is a
12 question of fact for you, the jury, to determine in accordance
13 with the instructions I'm about to give you.

14 When two or more people join together to further one
15 common unlawful design or purpose, a single conspiracy exists.
16 By way of contrast, multiple conspiracies exist when there are
17 separate unlawful agreements to achieve distinct purposes.

18 The government must prove the existence of the
19 conspiracy charged in the indictment. If you find that the
01:45 20 conspiracy charged does not exist, you cannot find the
21 defendant guilty. This is so even though you find that some
22 conspiracy other than the one charged in the indictment
23 existed, even though the purposes of both conspiracies may have
24 been the same, and even though there may have been some overlap
25 in membership.

1 If Mr. Klyushin acted in good faith, he cannot be
2 guilty of the crime of conspiracy. If Mr. Klyushin had a
3 good-faith belief that he was not violating the law, even if
4 that belief was mistaken, he did not have the necessary intent
5 to commit conspiracy or any of the crimes charged. In other
6 words, with respect to all of the charges, not just the
7 conspiracy that we're discussing now, good faith is simply
8 inconsistent with the element of willfulness.

9 While the term "good faith" has no precise definition,
01:46 10 it means, among other things, an honest belief, a lack of
11 malice, and lacking in intent to violate the law. A person who
12 acts on an honestly held belief is not punishable merely
13 because that honest belief turns out to be incorrect or wrong.
14 The law subjects to prosecution and punishment only those
15 people who act willfully and with an intent to violate the law.

16 The burden is on the government to prove the required
17 intent and consequent lack of good faith beyond a reasonable
18 doubt. Mr. Klyushin is under no obligation to prove good
19 faith.

01:47 20 Now I'm going to move on to Count Two which is wire
21 fraud. I'm seeing after-lunch a little bit effects here. Why
22 don't we stand and stretch to make sure I'm holding you.

23 (Pause.)

24 THE COURT: I'm talking about wire fraud right now.
25 Okay. I elevated the voice a bit just to wake you up. All

1 right, there you are, got smiles.

2 Count Two of the indictment charges Mr. Klyushin with
3 wire fraud. For you to find the defendant guilty of wire
4 fraud, you must be convinced that the government has proven
5 each of the following things beyond a reasonable doubt:

6 First, a scheme, substantially as charged in the
7 indictment, to defraud or to obtain money or property by means
8 of materially false or fraudulent pretenses. First, a scheme,
9 substantially as charged in the indictment, to defraud or to
01:48 10 obtain money or property by means of materially false or
11 fraudulent pretenses.

12 Second, the defendant's knowing and willing
13 participation in the scheme with the intent to defraud.

14 And, third, the use of wire communications in
15 interstate or foreign commerce, on or about the date alleged,
16 in furtherance of the scheme.

17 Wire communications in interstate or foreign commerce
18 include telephone communications, emails, Internet-based
19 communications from one state to another, or between the United
01:49 20 States and another country.

21 A scheme includes any plan, pattern, or course of
22 action.

23 The term "defraud" means to deprive another of
24 something of value by means of deception or cheating. A scheme
25 to defraud is ordinarily accompanied by a desire or purpose to

1 bring about some gain or benefit to oneself or some other
2 person or by a desire or purpose to cause some loss to some
3 person.

4 The term "money or property" includes confidential
5 business information. The term "false or fraudulent pretenses"
6 means any false statements or assertions that concern a
7 material aspect of the matter in question that were either
8 known to be untrue when made or made with reckless indifference
9 to their truth and that were made with the intent to defraud.

01:49 10 They include actual, direct false statements as well as
11 half-truths and a knowing concealment of facts.

12 The deception need not be premised upon spoken or
13 written words alone. To meet its burden under the wire fraud
14 statute, the government must prove beyond a reasonable doubt
15 that the defendant knowingly and willfully participated in a
16 scheme that involved the defendant or another involved in the
17 scheme misrepresenting his identity online to defraud or to
18 obtain money or property like confidential business
19 information.

01:50 20 To satisfy its burden of proof that a fact or matter
21 is material, the government is not required to show that the
22 fact or matter in fact influenced or deceived the decision-maker
23 to whom it was addressed. Rather, a fact or matter is material
24 if it has a natural tendency to influence or is capable of
25 influencing the decision-maker to whom it is addressed.

1 To act with intent to defraud means to act willfully
2 and with the specific intent to deceive or cheat for the
3 purpose of causing some financial loss to another or to bring
4 about some financial gain to oneself. Thus, if the defendant
5 acted in good faith, he cannot be guilty of the crime. The
6 burden to prove intent, as with all other elements of crime,
7 rests with the government.

8 Intent or knowledge may not ordinarily be proven
9 directly because there's no way of directly scrutinizing the
01:51 10 workings of the human mind. In determining what the defendant
11 knew or intended at a particular time, you may consider any
12 statements made or acts done or omitted by the defendant and
13 all other facts and circumstances received in evidence that may
14 aid in your determination of the defendant's knowledge and
15 intent. You may infer, but you certainly are not required to
16 infer, that a person intends the natural and probable
17 consequences of acts knowingly done or knowingly omitted. It
18 is entirely up to you, however, to decide what facts are proven
19 by the evidence received during the trial.

01:52 20 You've heard several times, and you saw that in the
21 closings, the terms "aiding and abetting." What does that
22 mean? What does to aid and abet mean? To aid and abet --

23 And you'll notice that aiding and abetting comes with
24 Count Two, Count Three, and Count Four involved also the
25 allegation of aiding and abetting.

1 To aid and abet means intentionally to help someone
2 else commit a crime. To establish aiding and abetting, the
3 government must prove beyond a reasonable doubt that someone
4 else committed the charged crime, and that the defendant
5 willfully participated in it as he would in something he wished
6 to bring about.

7 This means that the government must prove that the
8 defendant consciously shared the other person's knowledge of
9 the underlying criminal act, intended to help him, and
01:53 10 willfully took part in the endeavor, seeking to make it
11 succeed. The defendant need not perform the underlying
12 criminal acts, be present when it is performed, or be aware of
13 the details of its execution to be guilty of aiding and
14 abetting. But a general suspicion that an unlawful act may
15 occur or that something criminal is happening is not enough.
16 Mere presence at the scene of a crime and knowledge that the
17 crime is being committed are also not sufficient to establish
18 aiding and abetting.

19 I think I'll move at this point on to Count Three.
01:53 20 And, remember, all these counts have an aiding and abetting
21 with it. I won't repeat that instruction.

22 The defendant is charged in Count Three of the
23 indictment with computer fraud. For the defendant to be found
24 guilty of that charge, the government must prove each of the
25 following elements -- here we are going through the elements

1 again -- beyond a reasonable doubt. All right, what does the
2 government have to prove?

3 First, that the defendant, or someone he aided and
4 abetted, knowingly accessed without authorization a computer
5 used in or affecting interstate or foreign commerce or
6 communication. First, that the defendant, or someone he aided
7 and abetted, knowingly accessed without authorization a
8 computer used in or affecting interstate or foreign commerce or
9 communication.

01:54 10 Second, the defendant did so, or aided and abetted
11 another's doing so, with the intent to defraud. Second, that
12 the defendant did so, or aided and abetted another's doing so,
13 with the intent to defraud.

14 Third, by accessing the computer without
15 authorization, the defendant, or someone he aided and abetted,
16 furthered the intended fraud. Third, by accessing the computer
17 without authorization, the defendant, or someone he aided or
18 abetted, furthered the intended fraud.

19 And, fourth, that the defendant, or someone he aided
01:55 20 and abetted, by accessing the computer without authorization
21 obtained something of value. Fourth, that the defendant, or
22 someone he aided and abetted, by accessing the computer without
23 authorization obtained anything of value.

24 A person uses a computer without authorization when a
25 person accesses a computer without any permission at all. A

1 computer used in or affecting interstate and foreign commerce
2 includes computers connected to the Internet.

3 To act with intent to defraud means to act willfully
4 and with the specific intent to deceive or cheat for the
5 purpose of either causing some financial loss to another or to
6 bring about some financial gain to oneself. You may consider
7 any statement made or acts done or omitted by the defendant and
8 all of the facts and circumstances received in evidence that
9 may aid you in determination of the defendant's knowledge or
01:56 10 intent. You may infer, but you are certainly not required to
11 infer, that a person intends the natural and probable
12 consequences of his acts knowingly done or knowingly admitted.

13 Finally, Count Four, securities fraud.

14 In order to find the defendant guilty of securities
15 fraud, you must find that the government has proven each of the
16 following elements beyond a reasonable doubt. Here we go,
17 there are four elements:

18 First, the government must prove that in connection
19 with the purchase or sale of one of the securities -- of
01:56 20 securities specified in Count Four -- I'm sorry.

21 First, that in connection with the purchase or sale of
22 one of the securities specified in Count Four.

23 Second, the defendant employed any manipulative or
24 deceptive device or contrivance; any device, scheme or artifice
25 to defraud; or engaged in any act, practice, or course of

1 business that operated, or would operate, as a fraud or deceit
2 upon a purchaser or seller of the specified security. Second,
3 that the defendant employed any manipulative or deceptive
4 device or contrivance or any device, scheme or artifice to
5 defraud, or engaged in an act, practice, or course of business
6 that operated, or would operate, as a fraud or deceit upon a
7 purchaser or seller of the specified security.

8 Third, that the defendant acted willfully, knowingly,
9 and with the intent to defraud. Third, that the defendant
01:57 10 acted willfully, knowingly, and with the intent to defraud.

11 Fourth, that the defendant used, or caused to be used,
12 any means or instruments of transportation or communication in
13 interstate commerce, or used the mails, or any facility of any
14 national securities exchange, in furtherance of the fraudulent
15 conduct. Fourth, that the defendant used, or caused to be
16 used, any means or instruments of transportation or
17 communication in interstate commerce, or used the mails, or any
18 facility of any national securities exchange in furtherance of
19 the fraudulent conduct.

01:58 20 Now, let me go through the elements in greater detail.
21 The first element of the offense requires the government to
22 prove beyond a reasonable doubt that the alleged device,
23 scheme, or artifice to defraud be in connection with the
24 purchase or sale of the security.

25 Fraudulent conduct may be in connection with the

1 purchase or sale of a security if you find that the alleged
2 fraudulent conduct in some way touched upon a securities
3 transaction.

4 Second, the second element of the securities fraud
5 that the government must establish beyond a reasonable doubt is
6 that in connection with the purchase or sale of securities, the
7 defendant did any one of the following things:

8 One, employed a device, scheme, or artifice to
9 defraud, or made any untrue statement of a material fact, or
01:59 10 omitted to state a material fact necessary in order to make the
11 statements made, in light of the circumstances under which they
12 were made, not misleading; or engaged in an act, practice, or
13 course of business that operated, or would operate, as a fraud
14 or deceit upon the purchaser or seller.

15 It is not necessary for the government to establish
16 all three types of unlawful conduct. Any one is sufficient for
17 a conviction, if you so find, but you must be unanimous as to
18 which type of conduct the defendant engaged in.

19 A device, scheme, or artifice to defraud means the
01:59 20 forming of some plan or design to trick or to deceive in order
21 to obtain money or something of value. The words "fraud" or
22 "defrauding" means to trick, deceive, injure, or damage in some
23 way. "Fraud" is a general term embracing all efforts and
24 methods people use to take advantage of others.

25 If you find that the scheme involved the defendant or

1 another participant in the scheme misrepresenting his or her
2 identity online to access computer systems to obtain material
3 nonpublic information to trade on the confidential information,
4 then you may find that conduct is a deceptive device or
5 contrivance, or a device, scheme or artifice to defraud within
6 the meaning of the securities fraud statute.

7 The government must prove the nonpublic information
8 accessed is material. A fact is material if it has a natural
9 tendency to influence, or is capable of influencing, the
02:00 10 decision-maker to whom it is addressed.

11 A statement, claim or document is fraudulent if it was
12 false when it was made, or if it was made with reckless
13 indifference as to its truth or falsity, and made or caused to
14 be made with intent to deceive. A deceitful statement of
15 half-truths or the concealment of material facts may also
16 constitute fraud under the statute, if such omission or
17 concealment was intended to be misleading.

18 The government need not prove that the defendant
19 personally made a misrepresentation or that he omitted a
02:01 20 material fact. It is sufficient if the government establishes
21 that the defendant caused the statement to be made or the fact
22 to be omitted.

23 If you find that the government has established beyond
24 a reasonable doubt that a statement was false or fact
25 fraudulently omitted, you must next determine whether the fact

1 stated was material under the circumstances.

2 I've defined, for you, the word "material."

3 It does not matter whether the alleged unlawful
4 conduct was successful or not, or whether the defendant
5 profited or received any benefits as a result of the alleged
6 scheme. Similarly, the government is not required to prove
7 that the victim or victims of the fraud were actually
8 defrauded. It is enough to prove that the defendant engaged in
9 such a scheme to defraud.

02:02 10 Success or a benefit is not an element of the crime
11 charged. However, if you find the defendant did expect to
12 benefit from the alleged scheme, you may consider that in
13 relation to the third element, intent, which I will discuss
14 with you in a moment.

15 So the third element involves intent. Everything I've
16 been telling you thus far about Count Four relates to the first
17 and second elements of the crime of securities fraud; that is,
18 the existence of a fraudulent scheme in connection with the
19 purchase or sale of a security.

02:02 20 The third element of the crime charged in Count Four
21 that the government must prove beyond a reasonable doubt is
22 that the defendant participated in a scheme to defraud
23 knowingly, willfully, and with the intent to defraud. As I
24 personally noted, an act is done knowingly if it is done
25 purposefully and deliberately and not because of a mistake,

1 accident, mere negligence, or some other innocent reason. And
2 a person acts willfully if he acts deliberately and with the
3 intent to do something wrong; that is, with a bad purpose to
4 disobey and disregard the law. I told you that instruction
5 before. The defendant need not to have known that he was
6 breaking any particular law or any particular rule. The
7 defendant need only to have been aware of the generally
8 unlawful nature of the acts.

9 And, as I have noted, for the defendant to have acted
02:03 10 with a specific intent to defraud means that he must have known
11 of the fraudulent nature of the scheme and acted with the
12 intent that it succeed. In other words, to act with an intent
13 to defraud means to act knowingly and with a specific intent to
14 deceive, ordinarily but not necessarily for the purpose of
15 causing some loss to another person to bring some gain to
16 himself.

17 The government is not required to show that the
18 defendant, in addition to knowing what he was doing and
19 deliberately doing it, also knew that he was violating some
02:03 20 particular federal statute. However, he must have acted with
21 the intent to help carry out some essential step in the
22 execution of the scheme to defraud that is alleged in the
23 indictment.

24 The question of the defendant's intent is, again --
25 I've discussed with you intent before -- it's a question of

1 fact that you are called upon to decide, just as you determine
2 any other fact in the case. Intent to defraud involves the
3 state of a person's mind and the purpose with which he acted at
4 the time the acts in question occurred. Direct proof of
5 knowledge and fraudulent intent is rarely available, and you
6 are not required to find that such proof existed. It would be
7 a rare case where it could be shown that a person wrote or
8 stated that as of a given time in the past he committed an act
9 with fraudulent intent. Such direct proof is not required.

02:04 10 The ultimate facts and knowledge and criminal intent,
11 though subjective, may be established by circumstantial
12 evidence based upon a person's outward manifestations, his
13 words, his conduct, his acts, and all of the surrounding
14 circumstances disclosed by the evidence and the rational or
15 logical inferences that may have been drawn from them.
16 Circumstantial evidence, if believed, is of no less value than
17 direct evidence.

18 Since an essential element of the crime charged is
19 intent to defraud, it follows that the government must prove a
02:05 20 lack of good faith on the part of the defendant. I've talked
21 to you about good faith before. It is for you to decide
22 whether the defendant acted in good faith or not. If you
23 decide that he at all relevant times acted in good faith, it is
24 your duty to acquit him. That is because, however misleading
25 or deceptive conduct may have been, the law is not violated if

1 the defendant acted in good faith and held an honest belief
2 that his actions were proper and not in furtherance of any
3 illegal venture.

4 If you find that the defendant was not a knowing
5 participant in the scheme, or lacked the intent to deceive, you
6 must acquit him. Conversely, if you find that the government
7 has established beyond a reasonable doubt not only the first
8 two elements of Count Four -- that is, the existence of a
9 scheme to defraud in connection with the purchase and sale of a
02:06 10 security -- but also this third element, that the defendant was
11 a knowing participant and acted with intent to defraud, then
12 you would move on to the fourth element which I'm about to
13 discuss. If the government establishes the fourth element as
14 well, then you would have a sufficient basis upon which to
15 convict the defendant on Count Four of the indictment.

16 So now I'm discussing the fourth element of the fourth
17 count. The fourth and final element that the government must
18 prove beyond a reasonable doubt with respect to Count Four is
19 that the defendant knowingly used, or caused to be used,
02:06 20 either, A, any instrumentalities in interstate commerce, or, B,
21 a facility of a national securities exchange in furtherance of
22 the scheme to defraud.

23 The term "instrumentalities" in interstate commerce
24 means any number of instruments, devices, and means of
25 conducting trade, commerce, transportation, or communication

1 among one or more states, including interstate wire
2 communications such as telephone calls, emails, faxes, and the
3 use of computers connected to the Internet. Instrumentalities
4 of interstate commerce include the use purely within one state
5 of a telephone call, email, fax, or a computer connected to the
6 Internet, or any other instrument used to conduct interstate
7 communication.

8 The government need not prove that the defendant was
9 directly or personally involved in using an instrumentality of
02:07 10 interstate commerce or a facility of a national securities
11 exchange. It is enough if you find that he, by his actions,
12 directly or indirectly initiated steps or induced others to
13 initiate steps that resulted in a chain of cause and effect
14 resulting in the use of an instrumentality of interstate
15 commerce. This use could mean something like placing a
16 telephone call, sending an email, or using a computer connected
17 to the Internet.

18 With regard to using instrumentalities of interstate
19 commerce like phone calls, emails, or computers connected to
02:08 20 the Internet, it is not necessary that whatever was
21 communicated was fraudulent, otherwise criminal, or
22 objectionable. The matter communicated may be entirely
23 innocent so long as it is in furtherance of the scheme to
24 defraud.

25 The use of any instrumentality of interstate commerce

1 also need not be central to the execution of the scheme. All
2 that is required is that the use of any instrumentality of
3 interstate commerce bear some relation to the object of the
4 scheme or fraudulent conduct.

5 So I've now gone through all the elements of all
6 counts, but let's stand and stretch because I've got to talk to
7 you about venue, all right?

8 (Pause.)

9 THE COURT: Venue, what's venue? Please be seated.

02:10 10 The Constitution and federal law require that a criminal
11 defendant must be tried in the state or district in which the
12 offense is committed. Where an offense spans multiple
13 jurisdictions or where a crime consists of distinct parts which
14 have different localities, the whole may be tried where any
15 part can be proved to have been done. Continuing offenses that
16 are committed in more than one district may be prosecuted in
17 any district which such offense was begun, continued, or
18 completed. A defendant must be charged in a district that has
19 a meaningful connection to the allegations. To determine
02:11 20 whether a meaningful connection exists, you must consider the
21 nature of the crime alleged and identify the crime's essential
22 conduct elements, essential conduct elements. You must also
23 consider the locations where the criminal acts were committed.
24 The government must prove for each offense -- so each one of
25 those counts we just went through -- that venue is proper in

1 the District of Massachusetts.

2 Unlike all of the other elements that we talked
3 about -- remember I said "proof beyond a reasonable doubt"
4 numerous times -- but unlike all the elements that I previously
5 described, the government has to prove venue by a preponderance
6 of the evidence. That's a legal term, "preponderance of the
7 evidence." That means, to establish venue by a preponderance
8 of the evidence, the government must prove that the fact is
9 more likely true than not true, more likely true than not true.

02:12 10 To establish venue in this district, the government
11 need not prove that the crimes themselves were committed
12 entirely in this district, or that the defendant himself was
13 present here.

14 I'm now going to focus you on conspiracy.

15 With regard to the conspiracy charged in Count One,
16 there's no requirement that the entire conspiracy took place
17 here in Massachusetts, or that the agreement was formed here.
18 But for you to return a guilty verdict on the conspiracy charge
19 in Count One, the government must prove by a preponderance of
02:12 20 the evidence that any overt act in furtherance of the agreement
21 took place here in Massachusetts.

22 Alternatively -- now, I just want you to focus only on
23 the conspiracy count with respect to what I'm about to tell
24 you. Alternatively, with respect to the conspiracy count only,
25 the government has this alternative theory of venue. Under

1 federal law, where an offense is begun or committed outside the
2 jurisdiction of any particular state or district, venue for
3 prosecution of the offense is established in the district where
4 the defendant is arrested or is first brought. For venue to be
5 established for the conspiracy count under this alternative
6 theory, the government must prove that it is more likely true
7 than not true that the offense was begun or committed outside
8 of the United States, and that the defendant was first brought
9 to the District of Massachusetts. The government must also
02:13 10 prove that the essential conduct elements of the conspiracy
11 took place outside of the United States.

12 If the government fails to prove venue by a
13 preponderance of the evidence with respect to any count, you
14 must find the defendant not guilty of that count only. So for
15 every single one of these verdict slips, you also have to find
16 not only that the government proved the elements beyond a
17 reasonable doubt, but also that it proved venue by a
18 preponderance of the evidence, more likely true than not true.

19 I am now at the end of the middle section of this
02:14 20 charge. The hard part has been completed, and now I want to
21 talk to you about the mechanics of deliberation.

22 Okay, so let me talk to you about going back into that
23 jury room. The first thing that you should do upon going to
24 the jury room is to choose a foreperson. When I was a brand-
25 new young judge, which I no longer am, I used to look at you

1 all and try to figure out who would be the best foreperson, but
2 you all have been together for a long time now, two weeks, and
3 you know better than I do about who would make a good
4 foreperson. So the first thing that you should do when you go
5 back there is to choose a foreperson.

6 The foreperson is not more equal than the rest. You
7 heard them say it. The government said, "We're content with
8 this jury." The defendant said, "We're content with this
9 jury." You are all equal back there in the jury room.

02:15 10 However, the foreperson has certain responsibilities to me.

11 First of all, the foreperson must fill in the verdict
12 slip. I only want one. I don't need twelve floating around,
13 one official verdict slip. And the foreperson will count and
14 will insure that it's unanimous. It must be unanimous "not
15 guilty," unanimous "guilty." It's got to be unanimous either
16 way.

17 The second thing that the foreperson does will be to
18 ask me questions. I've given you a lot really quickly. You'll
19 be getting a tape recording; you'll be getting a transcript.

02:16 20 But it may be that you have questions about the law and it
21 would be helpful for me to clarify.

22 So the foreperson should -- Maryellen will give you a
23 piece of paper. Oh, jury question. You'll write down what the
24 question is and give it to the court officer, who will give it
25 to Maryellen. All the lawyers and I will huddle and try and

1 answer that question. But it's not like it will come back like
2 that, like an ATM machine, because sometimes it takes a while
3 for all of us to gather and come up with the right answer. So
4 the foreperson will write down the question.

5 The foreperson shouldn't just ask the court officer,
6 or ask Maryellen, or ask the court reporter, because then it's
7 like a game of telephone; I don't really exactly get what you
8 want. It's better for you to write it down.

9 The third thing the foreperson does will be to
02:17 10 announce the verdict in court. You'll hear us say, "So say
11 you, Mr. Foreperson? So say you, Madam Foreperson? So say
12 you, all members of the jury?" All of you have to stand and
13 ratify that it is a unanimous verdict.

14 The foreperson should never ask me what my memory of
15 the evidence is. I took, really, notes, sometimes on some days
16 better than others. Maybe some of you did; some of you didn't.
17 I can't tell you what so-and-so said on such and such a day.
18 You should use your collective memory, your collective notes.
19 If you get really stuck and you want the transcript, we can do
02:17 20 that, but it sometimes takes a while and might hold up the
21 deliberations. So please use your notes and your memory first.
22 If you need it, we can get it to you. All right? So that's
23 what's going on there.

24 We're going to bring in exhibits into the jury room in
25 a couple of minutes. The exhibits are paper and a computer so

1 that you can do it both ways, and we will bring those in. And
2 I hope we get everything to you. We're going to go through
3 them right after we send you out with all the lawyers to make
4 sure we get you everything.

5 Now let me discuss for a minute the role of the
6 alternates. I've never been a juror in a case. I've been
7 called, but I've never been a juror. But I'm sure if I sat
8 through this whole trial, I would have really not liked the
9 fact that I was an alternate. But that is the way our system
02:18 10 works. The last four jurors chosen are alternates, and so
11 today you go home, but I am going to ask you not to do any
12 research about the case or talk about the case until a verdict
13 is reached. You can call in and check. The reason I say that
14 is -- I'm really impressed with this jury, I have to say, and
15 I've been doing juries throughout COVID, and we always lost --
16 it sounds like a terrible example -- we've always had a few
17 people who couldn't continue deliberating for one reason or
18 another, and also there are snowstorms and no school and all
19 that. You stuck with it all the way through. But we chose
02:19 20 alternates if somebody were not able to continue. We may need
21 to call you in if over the weekend -- I hope this doesn't
22 happen -- something happens. So we may still need to call in
23 the alternates, so please don't discuss the case.

24 We will be sitting on every day or days from 9:00 to
25 4:00 until you reach a verdict. You have your room for as long

1 as you want it. We will feed you, treat you with TLC, and it's
2 not in any way designed to rush you at all. Today we were
3 thinking that it might be a bit of a tiring day. We were
4 thinking we'd leave at 4:00, and every day we'll leave at 4:00.

5 And the last and final thing I really want to talk to
6 you about is deliberating.

7 As I mentioned, I've never been chosen for a jury, but
8 I've always been impressed with my juries. You know, I get
9 very excited talking about my juries. I'm always impressed
02:20 10 with how seriously you all take your task. I mean, everything
11 done so far has been spot on.

12 When you go back there, everyone has a sense of what's
13 fair and just, what witnesses you believe, what witnesses
14 didn't you believe. Everyone goes back there with their sense
15 of what they think about this case. But the beauty of
16 deliberations is, you need to stay open-minded to hear what
17 other people from other walks of life with different experiences
18 also think about the evidence. So feel free, and you must, to
19 be open to changing your mind if there's a good reason for
02:21 20 doing that, if someone has a good point and someone has more
21 experience.

22 On the other hand, no one should change their mind
23 because you've been here long enough, you're ready for spring,
24 it's Valentine's Day. Whatever reason it is, no one should
25 change their mind unless you've got a principled basis for

1 doing it, because at the end of this, I am going to ask you to
2 stand up and agree with that verdict. So change your mind if
3 there's a reasoned basis for doing so, but don't change it just
4 because you disagree with other people, all right? So make
5 sure you own it essentially.

6 I need to talk to the attorneys for a few minutes
7 about any objections that they may have. I think I'll send you
8 back there to start talking. The four alternates should take
9 their things and leave. I may have to call you back in here if
02:22 10 the attorneys have any points that I need to address. There's
11 a lot in there. Maybe I misread something or they think
12 something is necessary to clarify something, but I think I'm
13 going to send you out there, and then I may call you back in a
14 few minutes. But otherwise, I'll call you back in here at 4:00
15 if I don't need to see you again.

16 So the four alternates at this point should just
17 leave, I think. So let me ask -- actually, let me ask the
18 lawyers, is there anything quick that you need to see me about
19 right now?

02:22 20 MR. FERNICH: Can you just instruct the alternates not
21 to do any research or look at social media.

22 THE COURT: Good point. The alternates shouldn't look
23 anything up on social media or the Internet, or whatever, about
24 the case because I might need you if someone isn't able to come
25 in on Monday. Okay. Okay? Other than that, no one needs to

1 see me right now? Good. All right, see you at 4:00.

2 (Jury excused.)

3 THE COURT: I'll see counsel at sidebar just for a
4 minute.

5 SIDEBAR CONFERENCE:

6 THE COURT: Let me start off by saying, we had an
7 extremely brief discussion after the closings about sending in
8 the indictment, and I didn't quite focus on how many times I
9 mentioned the indictment. I think I need to send it in.

02:24 10 MR. FRANK: I agree.

11 THE COURT: I don't think it harms you. I just -- I
12 don't see how else -- the whole set of instructions mentions
13 the indictment. I think I need to do that.

14 The government, any objections?

15 MR. FRANK: No, your Honor.

16 THE COURT: Defense?

17 MR. FERNICH: None beyond formally reiterating all of
18 those previously lodged.

19 THE COURT: You can't do that broadly. You mean the
02:24 20 brief you filed in writing?

21 MR. FERNICH: Yes, that, Judge, sure.

22 THE COURT: So I fixed a fair amount of those, so I'm
23 just --

24 MR. FERNICH: I need to discuss it for the record here
25 exactly what --

1 THE COURT: I don't want to tell you how to do your
2 job, but --

3 MR. FERNICH: All objections previously filed with
4 particular reference to venue and 3283, the high seas venue
5 statute in particular.

6 THE COURT: Okay, okay.

7 MR. FERNICH: Those are the main ones. And, of
8 course, we object to the charging on the *Khalupsky/Dorozkho*
9 theory. That was a big one.

02:25 10 Is there anything else?

11 MR. NEMTSEV: No.

12 MR. FERNICH: I think those are the most major ones.

13 THE COURT: The alternative theory of venue.

14 MR. FERNICH: Yes.

15 THE COURT: *Dorozkho*.

16 MR. FERNICH: Yes.

17 THE COURT: And -- I can't remember.

18 MR. FERNICH: That's it.

19 THE COURT: Okay, so --

02:26 20 THE CLERK: You just need to go over and put on the
21 record --

22 THE COURT: You need to put on the record that you're
23 content with the exhibits.

24 For the U.S. Marshals, we need him back here at 4:00,
25 okay? All right, thank you.

1 THE CLERK: Just need to know if the government is
2 content. Are you?

3 MR. KOSTO: We are content.

4 THE CLERK: So that's on the record.

5 MR. KOSTO: Regarding the exhibits?

6 THE CLERK: Regarding the exhibits. I'm sorry.

7 MR. KOSTO: Yes.

8 MR. FERNICH: Let me see if there's anything glaring I
9 left out.

02:26 10 THE COURT: Mr. Nemtsev, are you happy with the
11 exhibits?

12 MR. NEMTSEV: Yes.

13 THE COURT: And can I be clear that the laptop is not
14 going -- it doesn't go outside here? It just has documents on
15 it, right? It's not Internet-connected?

16 MR. FERNICH: It's like a jail laptop, you know? Two
17 seconds, okay? I'll get there fast.

18 THE COURT: Of course.

19 MR. KOSTO: The laptop was erased in its entirety, and
02:27 20 then the exhibits were saved to it electronically, so that's
21 all that is on the laptop.

22 MR. FERNICH: Yeah, I think I said specifically on the
23 venue stuff, the reasonable foreseeability charge, the absence
24 of that.

25 THE COURT: Yes.

1 MR. FERNICH: And particularly all the written
2 instructions that I submitted in the last three days with
3 regard to venue, I would say I incorporate all that by
4 reference, in addition to the things I said five minutes ago.

5 THE COURT: Okay, thank you.

6 MR. FERNICH: You're welcome.

7 THE COURT: I'm glad you caught the foreseeability.

8 MR. FERNICH: Yes, I think you got it by saying
9 everything that I submitted in writing, but the writings of the
02:28 10 last two and three days will suffice.

11 THE COURT: Okay, thank you.

12 (End of sidebar conference.)

13 THE COURT: Okay, so we'll see you back here at 4:00?
14 Although I do need Mr. Nemtsev to --

15 MR. NEMTSEV: We're satisfied with the exhibits.

16 THE COURT: And in particular, since I may not be
17 seeing you again on this, I want to thank very much; one, the
18 paralegals for making this very smooth with a lot of documents;
19 and, second, counsel, because this could have been very
02:29 20 tedious, and I actually think it went very smoothly.

21 MR. FERNICH: A pleasure to try the case before you.
22 Thank you.

23 (Discussion off the record.)

24 THE COURT: All right, here's the indictment,
25 everyone.

1 THE CLERK: Make sure there's nothing else attached to
2 that. I get nervous about -- okay. Got it. Thank you. So
3 this is going back in. Do you want this marked as something or
4 just the indictment?

5 MR. KOSTO: We're okay with it as is.

6 (A recess was taken, 2:30 p.m.)

7 (Resumed, 3:23 p.m.)

8 THE COURT: I received a question from the jury
9 foreman: "All three defendants --"

03:23 10 You know what? He isn't here.

11 MR. FERNICH: We waive his presence for this. Sorry
12 about that.

13 THE COURT: "All three defendants, Klyushin, Ermakov
14 and Rumiantcev, does the verdict apply to each defendant or
15 just Mr. Klyushin?"

16 I think I just say "Just Mr. Klyushin."

17 MR. FRANK: Judge, we had asked for an instruction on
18 other individuals not on trial. We think it's appropriate in
19 this circumstance. It's a little more than what you just said.
03:23 20 It says, "Some of the people who may have been involved in
21 these events are not on trial. This does not matter. There's
22 no requirement that all participants in a crime should be
23 charged and prosecuted or tried together in one proceeding.
24 You may not draw any inference, favorable or unfavorable,
25 towards the government or the defendant from the fact that

1 those individuals are not on trial. Your task is limited to
2 considering the charges contained in the indictment and the
3 defendant before you."

4 MR. NEMTSEV: I think it's so long, we can just say
5 deciding concerning Mr. Klyushin.

6 THE COURT: I'm going to say "Just Mr. Klyushin."

7 MR. FRANK: I think that the question suggests some
8 confusion on their part about why there are other defendants
9 named.

03:24 10 THE COURT: It's obvious to us because I read a whole
11 charge involving Mr. Klyushin, but all three are named, so I
12 think that's the confusion.

13 MR. FRANK: Exactly, which is why --

14 MR. FERNICH: And the indictment with all three
15 defendants on it.

16 MR. FRANK: Which is why I think that telling them
17 that the others --

18 THE COURT: I'm going to say, "The verdict only
19 applies to Mr. Klyushin."

03:25 20 (Pause.)

21 THE COURT: I said, "The verdict only applies to
22 Mr. Klyushin." Okay. I mean, I don't want him to be found
23 guilty based on the others. I mean, if they find that Ermakov
24 and Rumiantcev are guilty, they can't --

25 MR. FRANK: That's why we think the --

1 MR. KOSTO: We're asking that they be instructed that
2 they shouldn't be deliberating at all, either way, as to those
3 two individuals.

4 THE COURT: Well, I think they're all relevant. Once
5 they get into it, then they have to -- I mean, we included it
6 in the indictment we sent in, we included it in the verdict
7 form, but I think they need to understand --

8 Yes, just run it in.

9 THE CLERK: And then we can meet -- should I see if a
03:26 10 follow-up comes out or no?

11 THE COURT: No. Send them home. I'm tired.

12 THE CLERK: Would you like a copy of this? She put it
13 on the record what she wrote. I'm just going to give it back
14 to them, and then I'll have Al give it back to me after they
15 read it, and then I'll give it to you. So don't go too far.

16 (A recess was taken, 3:26 p.m.)

17 (Resumed, 3:43 p.m.)

18 THE COURT: I understand that Mr. Klyushin isn't here,
19 but --

03:43 20 MR. FERNICH: Yeah, we waive. We waive.

21 THE COURT: -- the thought occurred to me upstairs,
22 just to clarify this thing by just putting only Mr. Klyushin's
23 name on the verdict form. It never occurred to me they would
24 think otherwise, but I think this will just make it crystal
25 clear, and I'll hand it to them when I send them out. Does

1 that seem like an appropriate solution to you?

2 MR. FRANK: Yes. Yes, your Honor.

3 MR. NEMTSEV: Yes, absolutely.

4 THE COURT: Okay, so we will wait until -- I'm not
5 going to bring them out now. I'll bring them out in a few
6 minutes. As soon as he gets up here, we'll send them home, and
7 everyone can have a long weekend and relax.

8 Are you going home?

9 MR. FERNICH: No. We're going to go to the Bruins
03:44 10 game tomorrow.

11 THE COURT: I thought this was a crystal-clear way of
12 dealing with the question.

13 (Discussion off the record.)

14 (A recess was taken, 3:44 p.m.)

15 (Resumed, 3:51 p.m.)

16 THE CLERK: All rise for the jury.

17 (Jury enters the courtroom.)

18 THE COURT: Okay, please remain standing. This will
19 take ten seconds. I'm going to send you home for the day. I
03:53 20 remind you not to talk about this case with anybody. It's
21 almost going to become irresistible. They're going to say,
22 "What's it about? What's going on? Just don't talk to anyone,
23 and I'll ask you about that Monday morning.

24 When you come in Monday morning, don't start
25 deliberating until all -- I'm going to bring you in Monday

1 morning -- till I count to twelve, you know, that everybody is
2 here, so please don't start deliberating until I send you out
3 in the morning.

4 Now, you asked a very good question which I clarified
5 in an answer, but to make it crystal clear, I have a verdict
6 form that just mentions his name so that there's nothing left
7 that's confusing. So basically the verdict is only with
8 respect to Mr. Klyushin.

9 Okay, I think that's it, and I'll see you Monday
03:54 10 morning. Have a lovely weekend.

11 Would you give that to them, Clary. Okay.

12 No, no, not copies. Just one, that's fine. Just give
13 it to the Foreperson. Good-night.

14 (Jury excused.)

15 THE COURT: And I ask you, do you want to be here
16 Monday morning when I send them out? I do make it a practice
17 to count, make sure there are twelve, and send them out, and
18 make sure no one has spoken about the case.

19 MR. NEMTSEV: Yes, Judge.

03:55 20 THE COURT: I only care that all of you are here or
21 none of you are here.

22 MR. NEMTSEV: We'll be here.

23 MR. FRANK: We'll be here.

24 THE COURT: Good.

25 So please tell them I want Mr. Klyushin here in the

1 morning at 9:00. Okay, thank you very much. See you all then.
2 You deserve a nice restful weekend.

3 (Adjourned, 3:56 p.m.)

4 C E R T I F I C A T E

5
6 UNITED STATES DISTRICT COURT)
7 DISTRICT OF MASSACHUSETTS) ss.
8 CITY OF BOSTON)

9
10 We, Lee A. Marzilli and Kathleen Silva, Official
11 Federal Court Reporters, do hereby certify that the foregoing
12 transcript, Pages 10-1 through 10-153 inclusive, was recorded
13 by us stenographically at the time and place aforesaid in
14 Criminal No. 21-10104-PBS, United States of America v.
15 Vladislav Klyushin, and thereafter reduced by us to typewriting
16 and is a true and accurate record of the proceedings.

17 Dated this 11th day of February, 2023.

18
19
20 /s/ Lee A. Marzilli

21 _____
22 LEE A. MARZILLI, CRR
23 OFFICIAL COURT REPORTER

24 /s/ Kathleen Silva

25 _____
KATHLEEN SILVA, RPR, CRR
OFFICIAL COURT REPORTER